CANADA

RCMP PUBLIC COMPLAINTS COMMISSION

RCMP Act - Part VII
Subsection 45.46(3)

CHAIR'S FINAL REPORT

FOLLOWING A PUBLIC HEARING

Complainants:
Ms. Theresa Brake and Mr. Stephen Peter-Paul

January 19, 1999

File N^{os}: 2000-PCC-950252/253

CHAIR'S FINAL REPORT FOLLOWING A PUBLIC HEARING

I. INTRODUCTION

The Process

Under subsection 45.43(1) of the *RCMP Act,* the Commission Chair, where she considers it advisable in the public interest, may institute a public hearing to inquire into a complaint whether or not it has been investigated, reported on or otherwise dealt with by the Force. The hearing is conducted by members of the Commission assigned by the Chair and, when completed, the Panel prepares an Interim Report setting out their findings and recommendations about the complaint. That report is sent to the Solicitor General of Canada, the RCMP Commissioner and to all parties and their counsel.

Upon receipt of the Interim Report, the RCMP Commissioner is required to review the complaint in light of the report's findings and recommendations. The Commissioner must then notify the Commission Chair of any further action that has been, or will be, taken with respect to the complaint or provide his reasons for not acting on any of the findings or recommendations.

After considering the Commissioner's Notice, the Commission Chair prepares a final report setting out such findings and recommendations with respect to the complaint as she sees fit. That report is also sent to the Solicitor General, the RCMP Commissioner and to all parties and their counsel.

The Interim Report and the Commissioner's Notice

The Interim Report dated December 31, 1997, a copy of which is attached hereto as Appendix "A", was sent to the Solicitor General and the Commissioner. The Commissioner responded to the Interim Report by way of a letter to the Chair dated September 11, 1998 (the Commissioner's Notice), a copy of which is attached hereto as Appendix "B". The Interim Report includes a sufficient summary of the complaint and the evidence heard for the purposes of this Final Report.

II. FINDINGS AND RECOMMENDATIONS

I note, with appreciation, that the Commissioner agrees with the findings of the Panel.

Three of the Panel's recommendations (1: "continue to make available sensitivity and cross-cultural training"; 2: "continue to maintain a 'satellite office' on the Indian Brook Reserve"; and 3: "recruit, train and deploy more members of aboriginal descent") dealt with matters related to "Native Policing." The Commissioner, in his Notice, referred to the relevant Cadet training, continuing initiatives in sensitivity and cross-cultural training, specific agreements with particular First Nations Bands, including the Indian Brook Community, and policy with respect

to the recruitment of Aboriginal Cadets and Aboriginal policing generally. The Panel, in its Interim Report, made the following comment:

> "The issue of native policing is complex and requires considerable study beyond the evidence which was presented at this hearing. It would not, therefore, be appropriate for us to make detailed recommendations as to the model for policing in this community beyond some general observations."

It seems clear that the Commissioner has noted the "general observations' of the Panel respecting native policing and I am generally satisfied that this "complex" issue has been given continuing attention by the Force.

With respect to the Panel's recommendation that members of the RCMP who are the subject of a public complaint should not participate further in criminal investigations of the complainant, I believe the Panel's recommended approach is appropriate.

The Commissioner, in his Notice, rejects the Panel's recommendation and, in so doing, makes reference to a policy prohibiting a member from investigating a **public complaint** "where that member may be in a conflict of interest situation (s. XII.2.C.9 – RCMP Administration Manual)." In my view, there is a conflict of interest involved in every case of a member conducting a criminal investigation in relation to a person who has complained about the conduct of that member. The policy cited by the Commissioner does not address this concern either directly or inferentially. The concern is **not** that "officers dealing with complaints should not be directly involved with other investigations"; the concern is that members who are the subject of a complaint should not participate in a criminal investigation of the complainant. The proposed policy should make it clear that a member is not to participate further in a criminal investigation where the subject of the investigation has filed a complaint against that member or in any other circumstance giving rise to a real or apparent conflict of interest. Public confidence in the complaints process and the criminal investigation process would be seriously undermined by permitting any member to conduct a criminal investigation in relation to a person who has complained about his conduct.

The significance of the inherent conflict involved when a member is permitted to participate in a criminal investigation of a complainant is highlighted by the RCMP policy requiring a member to ensure that the Crown is "fully briefed on the public complaint" when it is made by an accused "against the member who arrested him/her or who is investigating the case (s. XII.2.E.11 – RCMP Administration Manual)." The relevant policy should be revised to reflect the Panel's concerns and to make the prohibition crystal clear. This is not a matter that should be left open to interpretation on a case by case basis.

With respect to the Panel's final recommendation, I have considered the comments of the Commissioner and am content with the proposed response to the Panel's expressed concern.

This is my final report to the Solicitor General and the Commissioner in relation to this complaint.

Shirley Heafey
Chair

January 19, 1999

Shirley Heafey
Chair
RCMP Public Complaints Commission
P.O. Box 3423, Station "D"
Ottawa, Ontario
K1P 6L4

Attach. (2)

APPENDIX A

102-06006/

CANADA

RCMP PUBLIC COMPLAINTS COMMISSION

RCMP Act - Part VII
Subsection 45.45(14)

COMMISSION INTERIM REPORT

Following a Public Hearing

Into the Complaints

of

Stephen Peter-Paul
and
Theresa Brake

PANEL

Alan T. Tufts, Q.C.
Ronald S. Noseworthy, Q.C.
Julie Dutil (resigned)

December 31, 1997

File N°: 2000-PCC-950253

RCMP PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act
Part VII
Subsection 45.45.(14)

COMMISSION REPORT

Following a Public Hearing
Into the Complaints
of
Stephen Peter-Paul
and
Theresa M. Brake

PANEL

Alan T. Tufts, Q.C.	Chair
Ronald S. Noseworthy, Q.C.	Member
Julie Dutil	Member (resigned)

Hearing Held at Halifax, Nova Scotia
April 15 to April 30, 1996
May 27 to May 31, 1996
September 9 to September 15, 1996

ROYAL CANADIAN MOUNTED POLICE
PUBLIC COMPLAINTS COMMISSION

ROYAL CANADIAN MOUNTED POLICE ACT, 1986

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1. INTRODUCTION – NOTICE OF DECISION TO INSTITUTE A HEARING

On September 5, 1995 the Chairman of the RCMP Public Complaints Commission gave notices of his decision made pursuant to subsection 45.43(1) of the RCMP Act to institute a public hearing into complaints made by Stephen Peter-Paul and Theresa Brake and pursuant to subsection 45.44(1) of the Act the Chairman assigned Alan T. Tufts as Chairman, Ronald S. Noseworthy, Q.C. and Shirley Heafey, members of the RCMP Public Complaints Commission to conduct a public hearing into the complaints. On October 19, 1995 the Chairman of the RCMP Public Complaints Commission issued revised notices with respect to the same complaints provided for the reassignment of the hearing members. In the later notices Ms. Shirley Heafey was replaced by Ms. Julie Dutil.

2. THE COMPLAINTS

The complaints of Mr. Stephen Peter-Paul as disclosed in the notice of decision to institute a hearing are as follows:

1. On the 29th of April 1994, Mr. Stephen Peter-Paul was unlawfully arrested by Constable M.K. Stothart at his residence at 11 Vine Avenue, Indian Brook; officers removed him from his brother's vehicle and he was handcuffed and brought to Enfield Detachment and placed in the lock-up.

2. On the 29th of April 1994, Mr. Peter-Paul was unlawfully arrested by Constable M.K. Mackin [sic] at his residence at 11 Vine Avenue, Indian Brook; officers removed him from his brother's vehicle and he was handcuffed and brought to Enfield Detachment and placed in the lock-up.

3. On the 29th of April 1994, Mr. Peter-Paul was unlawfully arrested by Constable G.J. Fiander at his residence at 11 Vine Avenue, Indian Brook; officers removed him from his brother's vehicle and he was handcuffed and brought to Enfield Detachment and placed in the lock-up.

4. During the arrest on April 29, 1994, Mr. Peter-Paul was pulled out of the car by Constable F.J. Mackin and thrown to the ground; while face down on the ground his arms were twisted behind his back and he was handcuffed; his face and body were pushed into the ground and he was injured on the face and arms and body; when placed in the car his face was struck on the door and he incurred injury to his right temple; all of which consisted in improper force used by Constable Mackin.

The complaint of Theresa M. Brake as disclosed in the notice of decision to institute a hearing is as follows:

> On the 29th of April 1994, Constable Stothart [the RCMP found, during their investigation, that it was Constable F.J. Mackin and not Constable Stothart] was on the ground practically on top of Steven Peter-Paul trying to handcuff him; in trying

to get the Constable's attention, Ms. Theresa Brake was yelling at him and pushing on the front of his shoulders because she was above him and, at one point, Constable Mackin's hand came up and hit Ms. Brake on the left side of her head and she fell backwards; all of which, in Ms. Brake's view, consisted in an assault; Constable Mackin then grabbed Ms. Brake and twisted her arm and told her she was going to be arrested; Ms. Brake yelled at him and he let her go when she asked him why she was being arrested. Ms. Brake's glasses fell off when Constable Mackin hit her; all of which consisted in improper force used by Constable Mackin.

3. THE PROCESS

The public hearing into the complaints was conducted at the Airport Hotel near Halifax, Nova Scotia. This site is approximately 20 kilometres east of the Indian Brook Reserve, the location where the subject matter of the complaints occurred. The hearing took place from April 15, 1996 to April 30, 1996, May 27, 1996 to May 31, 1996 and September 9, 1996 to September 16, 1996 following which the Commission received written submissions on behalf of all parties represented at the hearing.

The Commission heard evidence from 30 witnesses during the public hearing as well as taking a view of the home of Mr. Stephen Peter-Paul, his surrounding neighbourhood and the lock-up area at the Enfield Detachment of the RCMP. The Commission also viewed a demonstration conducted by the RCMP at the Enfield Detachment of the RCMP of a "take down" arrest procedure. The Commission received 49 exhibits.

The Commission was assisted in the hearing by counsel for the Commission. Each of the named members of the RCMP, the Appropriate Officer and each of the complainants were also represented by counsel. Staff Sergeant Kelly Palmer was represented by counsel for the two weeks of the hearing from April 15, 1996 to April 30, 1996. No written submissions were received on behalf of Staff Sergeant Palmer. Otherwise all counsel were present throughout the entire hearing.

4. RESIGNATION OF COMMISSION MEMBER JULIE DUTIL

On October 2, 1996 Commission member Julie Dutil resigned from the RCMP Public Complaints Commission. Representations from the parties to the public hearing were sought and received regarding the effect of Commission member Dutil's resignation on the jurisdiction of the Commission to continue its hearing pursuant to Part VII of the RCMP Act. The remaining two panel members concluded that they had jurisdiction to continue the hearing and prepare and send a report to the Minister and the Commissioner of their findings and recommendations with respect to the complaint in accordance with subsection 45.45(14) of the RCMP Act. The complete decision of the Commission on the issue of jurisdiction is included in Appendix B attached to this Report.

5. SUMMARY OF FACTUAL SITUATION

The incident giving rise to the two complaints occurred at the Indian Brook Reserve on April 29, 1994. Stephen Peter-Paul is a Mi'Kmaq and lives at Vine Street on the Indian Brook Reserve, a native community near Shubenacadie, Nova Scotia, approximately 50 kilometres west of Halifax.

Mr. Peter-Paul operated a small cleaning business at the time of the incident and had been working all night in Halifax until the morning of the day in question. Before arriving home he visited his aunt who was unexpectedly ill and whose condition was apparently serious. Mr. Peter-Paul testified that his aunt's condition significantly affected him.

Mr. Peter-Paul arrived at his home at approximately 1:30 p.m. At that time he began to drink from a pint bottle of vodka. There is considerable discrepancy in the evidence as to the state of Mr. Peter-Paul's sobriety and his actions leading up to the arrival of the RCMP.

At approximately 2:15 p.m. a call was received at the Enfield Detachment of the RCMP, approximately 20 kilometres from Indian Brook, complaining of certain actions with respect to Mr. Peter-Paul. The call was received by Constable Keith Stothart who together with Constable Frank Mackin responded to the complaint.

After making a patrol of the Reserve looking for Mr. Peter-Paul, the two officers met a third officer Constable Gower Fiander before arriving at Mr. Peter-Paul's home. Throughout the procedure the officers were in radio contact with Staff Sergeant Kelly Palmer and Staff Sergeant Cornect who remained at the Detachment until shortly before the incident concluded.

When the three officers arrived at Mr. Peter-Paul's home, he was seated in the passenger's side of his brother's car which was parked in his front yard perpendicular to his house. Constable Stothart approached the vehicle and confronted Mr. Peter-Paul with his reasons for the police presence. Mr. Peter-Paul admittedly cursed and swore at the officers. During this encounter Constable Stothart was engaged in conversation with Ms. Theresa Brake, Mr. Peter-Paul's mother.

After a brief discussion, Mr. Peter-Paul was arrested. The arrest was effected in a "take down" style where Mr. Peter-Paul was brought immediately to the ground face first. He was handcuffed and taken to the police car. Throughout the episode a number of members from the community congregated in the immediate area. Other members of Mr. Peter-Paul's family were involved in the incident including his mother who has made serious allegations about being "punched" by one of the officers after she tried to persuade the officers not to arrest her son.

Again, there is a wide discrepancy in the factual account of this incident at Mr. Peter-Paul's home. In crucial areas of dispute, the evidence of certain witnesses is diametrically opposite. A full review and account of the evidence is included in this report.

Mr. Peter-Paul was subsequently taken to the Enfield Detachment of the RCMP where he remained in custody overnight. He was released the next day and charged with causing a disturbance contrary to section 175(1)(a)(i) of the Criminal Code. He was later acquitted. He suffered a number of bruises and lacerations as a result of his arrest and detention.

After the police left Mr. Peter-Paul's home, Theresa Brake and Tamara Peter-Paul, Stephen Peter-Paul's wife went, to the Enfield Detachment. Ms. Brake made a formal complaint about the actions of one of the officers. She was charged with obstructing a peace officer in the execution of his duty contrary to section 129(a) of the Criminal Code and was later acquitted.

Mr. Peter-Paul subsequently made a complaint about the officers' conduct to the RCMP Public Complaints Commission pursuant to the provisions of the RCMP Act.

6. THE EVIDENCE

There are serious discrepancies in certain important aspects of the factual accounts of many of the witnesses who were present at Mr. Peter-Paul's residence before and during his arrest. Mr. Peter-Paul's account of what occurred at the lock-up at the Enfield Detachment of the RCMP differs significantly from the evidence given by the other witnesses present that evening. Also, Ms. Brake's and Tammy Peter-Paul's impressions of their dealings with the RCMP at the Enfield Detachment on the day in question are not shared by the RCMP officers who testified.

For this reason, a full and detailed account of the evidence of each witness will be reviewed and emphasis added where such discrepancies exist in a material way.

The order in which the evidence of each witness is described in this report is not necessarily the same order as the witnesses testified at the hearing.

Evidence of Theresa Brake

Theresa Brake was at her son's home on Vine Street at the Indian Brook Reserve on the day in question. She was working in the store area in the lower level of her son's home. She had been helping in the store and minding her grandchildren which was apparently a common practice for her.

Mr. Peter-Paul's residence is built on the side of a small slope such that the basement portion of the house is fully exposed. Viewing the building from Vine Street, the store area is located in the right-hand side of the basement area. To the left was located a gaming arcade which was operated by Mr. Stephen Peter-Paul. Further to the left was a long set of

stairs that extended to a landing which provided the entrance to the main portion of the house upstairs from the arcade and the store. The landing area is quite visible from other properties in the neighbourhood.

Stephen Peter-Paul arrived home around 1:30 p.m. having worked all evening the night before. He indicated to his mother that he had visited his Aunt Yvonne in the hospital on the way home, and that she was ill. Apparently, her health was not good and he was upset as a result.

She indicated that he had a pint bottle of vodka with him and had opened the bottle and intended to drink it. She took the bottle and poured a small portion out of it on the ground outside of the front step of the store. She then poured a small portion of orange juice, which she got from the store into the bottle. Stephen Peter-Paul then began to drink directly from the bottle.

After a brief discussion with his mother, Mr. Peter-Paul left the store area and went upstairs where his wife and other members of his family were present. Approximately 20 minutes later, Tamara Peter-Paul, Stephen Peter-Paul's wife, came and asked Ms. Brake to come upstairs, as her son wished to speak with her. Tamara Peter-Paul stayed in the store area while Ms. Brake went upstairs. She found her son in the bedroom and stayed with him for approximately 20 minutes, during which time he was drinking from the same pint bottle of vodka.

Eventually, she left the house and returned to the store and stood in the doorway while her grandchildren played in the yard, immediately in front of the house. She recalled that her son had come from the house and had a bottle in his hand and had stretched his arms upward. This was on the landing at the top of the stairs at the front entrance of the house. She denied hearing any argument between her son and his wife, and denied hearing any cursing and swearing by him as alleged by others. She also denied that her son was agitated or upset or that he was intoxicated. Her evidence in this latter respect is remarkably different from that of the evidence of some of the neighbours and of the RCMP officers.

She testified that her other son Christopher Paul drove in the driveway in a black Thunderbird automobile and parked near her own vehicle. Stephen came down the stairs and got in the car with him. She went over to the passenger side of the car where Stephen was sitting and they had a short discussion about Stephen leaving and going back to her home to sleep.

She was talking with Stephen through the passenger's window of the car when the RCMP arrived. She recalled that the officers got out of their cars and approached Stephen asking questions about a gun. At that point, she pulled back and one of the officers approached her and asked her if there were any guns. She advised the police that there were none to her knowledge.

She admitted that Stephen told the officers to "get the 'F' out of my yard" and that he had repeated this three times. She said that the officers told Stephen "you are not going anywhere". She testified that Stephen unbuckled his seatbelt and that he reached for the door but before he pulled the latch, the officer opened the door and pulled him from the car. He was then put down to the ground face first, and one officer was on either side of him and one was at his head. He was parallel to the front of the building and it appears from her evidence that Constable Frank Mackin was on the right side of Mr. Peter-Paul with his back to the street facing the store; Constable Keith Stothart was on his left side facing the road and Constable Gower Fiander was at his head.

Ms. Brake contended that she was standing between Stephen and the store. She indicated that she reached across her son as he lay on his stomach and tapped Constable Mackin on the shoulders and pleaded with him to stop the arrest and to wait for a native constable. While she was unaware of the constable's identity, she clearly testified that the officer that she was tapping was facing the store and was on Stephen's right side. She said that the same officer looked up and hit her in the face with his fist knocking her back toward her daughter-in-law Tamara, and knocking her glasses from her face. She testified in one instance that he "hit me on the side of my head with his fist".

After she got back to her feet, a child gave her a pair of glasses which appeared to be twisted. She testified that she twisted the glasses further before they were grabbed out of her hand by one of the constables. She contended that while she was told later these were not her glasses, she was not aware of that at the time. She said that she was frustrated and angry, and that that was why she had wanted to destroy her own glasses. She then continued to look for her glasses and found them on the ground where apparently somebody had trampled on them. She testified that during the arrest, Stephen was grabbed by his hair and that his face was pushed into the gravel by one of the constables.

She also testified that someone in the crowd or someone had said "you 'F'-ing Indian". She also recalled that after the incident with the glasses, Constable Mackin grabbed her by the arm, twisted it behind her back, and took her toward the police car. He told her that she was under arrest, but before getting to the car, he let her go. She said that she saw Stephen being taken to the police car and that his head was bumped on the door of the car.

As the arresting officers were leaving the scene, she recalled that Constable Stephen Michael, a native constable, arrived. She had a brief conversation with him, and wanted to know specifically who the officers were, as she wanted to make a complaint against them. She and Tamara Peter-Paul then left the area and drove to the Enfield Detachment of the RCMP. She said she went to the detachment to "lay charges" against the officer who hit her, and also to find out what had happened to her son. When she arrived at the detachment, she informed the receptionist that she wanted to lay charges against one of the officers. After waiting for approximately 15-20 minutes, she decided to leave. When they left the detachment and were about to get into their car, one of the officers came running to them and said "don't you want to lay your charge". She was then taken back into the detachment and placed into an office by herself. She said that she was questioned as to whether she

wanted to "lay the charge", but before doing so, she was charged with obstructing a police officer in the execution of his duty. She was asked to make a statement and she declined to do so. She then made her complaint by explaining to the officer what had happened. He wrote out the complaint and she signed it. In the meantime, Tamara Peter-Paul tried to see Stephen but was denied. She and Tamara Peter-Paul then left the detachment.

Evidence of Stephen Peter-Paul

Mr. Peter-Paul's evidence was largely in conformity with that of his mother Theresa Brake. He confirmed that he arrived at his home around 1:30 p.m. after working all night at his cleaning business in nearby Halifax. Apparently, he had stopped to visit his Aunt Yvonne in the hospital after she became unexpectedly ill. He testified that he had stopped at a local liquor store to purchase a pint bottle of vodka, and that his intentions were to go home, "snap it back" and go to sleep.

He confirmed the evidence of Theresa Brake that when he arrived home he met his mother who had been working in the small store in the lower level of his home. He began to drink directly from the pint bottle of vodka after his mother had mixed it with a small amount of orange juice. In his evidence, he admitted to having a disagreement with his wife regarding his business. Apparently, she was not pleased with him working in the evenings. While he admits there was swearing between he and his wife, he testified that he considers this type of language to be normal in his everyday conversations.

He also confirmed that his mother-in-law, Genevieve Paul, as well as Sheena Paul, Frank Smith, and Sandy Brooks were at his home during this time. He confirmed that he had taken the bottle of vodka out onto the veranda on the front entrance of his home at the top of a long flight of stairs. He testified that he drank from the bottle on the stairs, and eventually threw the bottle on the ground near the front of the house. He testified that there was a small amount of vodka left in the bottle when he did this.

He recalled in his evidence that his brother Chris Paul drove into the yard and parked in front of the store area, and that he was talking with him from the stairs. He told his brother "let's go drive around" and his brother agreed. He testified that he got into his brother's car in the front passenger's seat and that Frank Smith sat in the rear seat of the vehicle. He confirmed that his mother came over to the passenger side of the car and was persuading him to go to her home to sleep.

He testified that there was loud country music coming from the stereo in his home, and that loud "rap music" was coming from the arcade below. He maintained in his evidence that the noise from the music, and the children playing in the yard, would make it difficult for him to sleep at his own home, and that for this reason he was leaving to go to his mother's residence.

He testified that when the RCMP arrived, they approached the passenger's side of the vehicle where he was seated. They told him that they had a complaint regarding a gun. He

admitted in his testimony that he told them to "get the fuck out of the yard", and further said "I suppose you want to fucking search me now". He testified that he was asked to unlatch his seatbelt and step out of the car. He said that when he went to unlatch his seatbelt he "flew out" of the car and went immediately to the ground. He said that his arm was lodged under him while he was pinned to the ground. At the time of the incident, he had long hair extending from the back of his head and that one of the police officers had grabbed him by his hair and was pressing his face into the gravel driveway. At one instance he banged his head on the ground and caused a large cut on his lip. He maintained that he was not resisting arrest, but did admit he was screaming at the officers.

He testified that he hit his head on the police car door as he was being placed in the rear of the police vehicle. He maintained that he was not struggling while the police officers lifted him from the ground and moved him the short distance to the police cruiser. He felt that his head was deliberately pushed into the door, and to use his words "one little extra shot before I go". He said as a result of his head hitting the police door, he had lost consciousness. He denied that there was ever a gun present during the incident.

Mr. Peter-Paul testified that he was taken to the Enfield Detachment of the RCMP and placed in the cells. He claimed that he was thrown up against the wall of the cell and sustained an injury on the side of his temple as a result. He testified that he was told "you fucking warriors think you're tough now". He remembered waking up and yelling for the suicide prevention officer and a doctor, although he did admit his recollection was not clear. He testified that during the time in the cell, he was chanting on a number of occasions which is a native ritual designed to gain strength. He remembered Constable Stephen Michael coming to see him while he was in the cell. In his testimony he was very unclear as to any specific times regarding the occurrences at the detachment or in the cells. He was released in the morning and was charged with causing a disturbance in a public place.

During Mr. Peter-Paul's evidence, a series of photographs taken of his upper body the day after the incident were admitted. The pictures showed a number of abrasions, bruises, and lacerations about his face and upper torso. Particularly, it showed a large cut on his upper lip, as well as a noticeable bruise on his left temple. The pictures also disclosed a number of scratches and cuts on his upper body as well as his legs. He testified that he had been examined by Dr. Locke the day following the incident, and that he had taken 20 milligrams of valium that same morning. He admitted that he asked Dr. Locke for a prescription of valium and was refused.

Mr. Peter-Paul testified that throughout the incident he was not intoxicated, denied that he was causing a scene or a disturbance as others have testified, and denied ever saying that "I'll shoot myself" as was suggested.

Evidence of Tamara Peter-Paul

Tamara Peter-Paul is the wife of Stephen Peter-Paul. Her evidence is largely in conformity with that of her husband. She confirmed that after her husband arrived home in the morning,

he was very upset that his Aunt had been hospitalized. She confirmed in her evidence that when he came in the house, he was drinking from a pint bottle of vodka, and turned on the music and was walking about the house. She confirmed that they had a "little disagreement about the job he was doing" because she was not in favour of him working at night and sleeping during the day. She did admit that they may have been swearing at each other, but she denies they were yelling at each other above a normal tone of voice.

She testified that she received a phone call from the RCMP advising that they had received a complaint that her husband had a hand gun. She replied that while her husband owned a gun, she informed them he did not have a gun on him. It appears that this telephone call occurred in the store area on the lower level of Mr. Peter-Paul's residence. It was immediately outside of the store where the arrest incident took place. While Mrs. Peter-Paul was speaking with the police on the telephone, the RCMP officers arrived in her yard. At that point in time, she left the phone off the hook and went outside to see what was happening. It was at this time that Staff Sergeant Kelly Palmer heard what he thought was gunfire.

She testified that Chris Paul, her husband, and Frank Smith were in the car. She was standing behind Theresa Brake, who was next to the passenger side of the black Thunderbird. She confirmed that the police officers mentioned a gun complaint to her husband, and that he told the police "I suppose you guys want to fucking search me". She maintained that they replied "yes". She described the conversation between the police and her husband as being very harsh on both sides. She was uncertain whether her husband had put his hand on the door of the vehicle, but that in any event, the police opened the door and pulled him out.

Mrs. Peter-Paul testified that during the arrest she and Theresa Brake were asking the officers to stop and wait for the native constable to arrive. She confirmed that Theresa Brake was trying to get the officers' attention when she touched one of them on the shoulder and asked him to wait. She testified that the officer "got up a little" and he punched her in the face. Mrs. Peter-Paul testified that she was standing immediately behind Ms. Brake at that time, and as a result of the contact, Ms. Brake was thrown back into her and they both fell to the ground. She maintained that Ms. Brake lost her glasses when she was hit by the police officer. She also testified that the same officer who hit Theresa Brake also hit Anna-Marie Peter-Paul.

She said that there were a number of people gathered in the area and that the police were yelling to people to stay back. She also testified that people were yelling at the police after Ms. Brake was struck, and voicing their concern as to why she was hit. She did confirm that rap music was playing from the arcade and that the " 'F' word " was coming out repeatedly.

While she did not have a clear recollection of her husband being lifted from the ground by the officers, she did have a recollection of him being grabbed by the back of the neck and having his face deliberately struck against the door of the vehicle while he was being placed in the back seat. She remembered that Constable Stephen Michael arrived at the scene while

the police were leaving, and that Constable Michael had given her the names of Constables Fiander and Stothart as the officers who were involved in the incident.

She testified that she went to the Enfield Detachment of the RCMP with Theresa Brake because they were concerned about her husband's safety and his whereabouts. Her account of what happened at the detachment is similar to that of Ms. Brake's.

Evidence of Anna-Marie Peter-Paul

Anna-Marie Peter-Paul is a cousin to Stephen Peter-Paul and lives at Indian Brook Reserve near him. On the day in question, Anna-Marie Peter-Paul had gone to Mr. Peter-Paul's store at approximately 2:30 p.m. She testified that he was visibly upset because his Aunt (and her mother) was in the hospital seriously ill and not expected to live. This was the first time Anna-Marie Peter-Paul had learned of her mother's serious illness.

She saw the RCMP arrive and testified that Stephen Peter-Paul was pulled from the vehicle and thrown to the ground. She said that she was standing behind the police officers and kept yelling at them to let him go. She testified that she was pushed to the ground by one of the police officers who hit her in the chest with two hands. She maintained that she also saw Theresa Brake and Tammy Peter-Paul on the ground as well. She testified that during the arrest procedure, she saw one of the officers open the door to the black Thunderbird and throw Stephen Peter-Paul up against the side of the car and then to the ground. She denied that Stephen Peter-Paul had been drinking or was intoxicated, though she admitted she was not close enough to detect the odour of alcohol. She could not recall hearing any foul language, nor hearing loud music. She was wearing pink Spandex pants, which is noteworthy, as many references are made to her in the evidence of other witnesses.

Evidence of Christopher Paul

Christopher Paul is the half-brother of Stephen Peter-Paul and son of Theresa Brake. He confirmed in his evidence that he arrived at Stephen Peter-Paul's residence between 2:30 and 3:00 p.m. on the day in question. He felt that Mr. Peter-Paul was in a normal mood and saw no evidence that he had been in an argument or was upset. He did confirm, however, that after the police approached he began to swear, and became loud. He also confirmed that the police officers' tone of voice changed in reaction to Stephen's actions.

He confirmed that he and Stephen had been in the car approximately 10 minutes prior to the arrival of the police. He had no recollection that they intended to go to Theresa Brake's home to spend the night, but rather that Stephen and Frank Smith wanted to "drive around", but he indicated that he was not up to doing this. His evidence regarding the seatbelt was confusing and inconsistent. One minute he said the seatbelt was on, and later he contradicted himself. He was, however, certain that Stephen did not open the door to the vehicle, and that it was, presumably, opened by the police.

He also testified that one of the officers punched Theresa Brake in the face with a closed fist. He identified the officer as the one who was in a kneeling position at the time; however, when he struck Ms. Brake he made a movement to stand up. He maintained that Ms. Brake began to fall backwards as a result of being struck and that the officer made an additional attempt with his left hand to strike her again, but missed. He did notice that Theresa Brake picked up a pair of glasses and twisted them before throwing them on the ground. He confirmed that he was swearing at the police after Ms. Brake was hit and testified that one of the officers started to chase him, but failing to apprehend him, returned to the scene. He did admit to raising his hand to one of the officers, and admitted that he felt angry and wanted to strike one of them because they hit Ms. Brake.

Evidence of Genevieve Paul

Genevieve Paul lives at the Indian Brook Reserve, and is the mother of Tamara Peter-Paul. She was at Stephen Peter-Paul's residence on the day in question, having arrived in the morning of the same day. She recalls being in the back bedroom when Stephen Peter-Paul was speaking with his mother. She recalled that he had been drinking vodka, and while she maintained that he was not intoxicated, she admitted that he appeared to be feeling the effects of the alcohol. She never saw any signs of Stephen Peter-Paul being upset, nor witnessed any argument between him and his wife regarding his long working hours. She described him as being in a happy mood.

She said that she was at the top of the stairs when the police arrived, but descended the stairs and witnessed Stephen Peter-Paul being taken from the car. She said that she could see Stephen Peter-Paul through the windows of the car take off his seatbelt, and he was pulled from the car and put to the ground by the RCMP. While she could not hear what Mr. Peter-Paul was saying to the RCMP, she felt that he was co-operating.

She said that she came around the car and was standing near Stephen Peter-Paul's feet and witnessed Theresa Brake being hit. Her evidence in this regard is inconsistent with most others who witnessed Ms. Brake being struck. She described the officer in question as having grey hair and a moustache, and being the oldest of the officers, which is clearly a reference to Constable Mackin. However, she maintained this officer was nearest to the store and facing the street. She described him as kneeling with one knee on Mr. Peter-Paul's back. She described Ms. Brake as pleading with the officer not to hurt her son, and that Ms. Brake was reaching out with her hands. While she denied that Ms. Brake had touched the officer, she did admit in cross-examination that she did tap him to ask him not to hurt her son. She then testified that the officer "...turned around and punched her[Theresa Brake] in the head and sent her flying back against my daughter and they both fell on the ground".

She maintained that there was loud music playing which made it difficult for her to hear what was being said. She indicated that the crowd did not arrive until the school bus came, which was after the police arrived. She also said that Stephen Peter-Paul was not resisting arrest and that he was co-operating when the police took him to the police car. She saw the police deliberately strike his head against the car door while he was being placed in the rear

of the police vehicle. She also intimated that Constable Mackin threatened to hit her before running after Frank Smith.

Evidence of Sandy Brooks

Sandy Brooks lives at the Indian Brook Reserve and was at Stephen Peter-Paul's residence on the day in question. He confirmed that Mr. Peter-Paul was on the stairs being loud and yelling for a period of approximately 5-10 minutes prior to the police arriving. He was not sure why Mr. Peter-Paul was yelling, but did confirm that he was cursing and swearing.

He saw Mr. Peter-Paul in Chris Paul's car, and believed that they were about to leave to go to the home of Stephen Peter-Paul's mother. He said that he saw the passenger's door open and that one of the officers grabbed Stephen Peter-Paul and threw him to the ground before he had a chance to get out of the vehicle. He maintained that Mr. Peter-Paul was not offering any resistance to the officers.

While he was not clear on whether Ms. Brake had touched one of the officers, he did say that she was struck by one of them, but could not identify the officer. He described the incident as seeing "a fist coming out of nowhere".

Evidence of Sheena Paul

Sheena Paul was working in Stephen Peter-Paul's arcade in the lower level of his home on the day in question. She had no recollection of Stephen's behaviour prior to the police arriving. She did indicate that the music in the arcade was very loud.

She was in the arcade when the police arrived, but did maintain that she saw Stephen taken from the car and put to the ground. She heard Theresa Brake pleading with the police to let her talk to her son. She said that she saw the police hit Ms. Brake after which she went back into the arcade but did not see the rest of the incident. During the episode, she was caring for Mr. and Mrs. Peter-Paul's son, Reuben. She admitted that Ms. Brake was interfering with the police officer's attempt to arrest Mr. Peter-Paul. However, she maintained that she was disturbed by one of the officers having hit Ms. Brake for no apparent reason.

Evidence of Mary Brooks

Mary Brooks lives on the Indian Brook Reserve near the home of Stephen Peter-Paul. She is the Aunt of Tamara Peter-Paul, sister of Genevieve Peter-Paul, and mother of Frank Smith and Sandy Brooks. On the day in question, Mrs. Brooks was at Mr. Peter-Paul's store as the police were placing him in the rear of the police vehicle.

She testified that she saw the police bang Mr. Peter-Paul's head on the car door as he was being placed in the rear of the vehicle. She also testified that she had a brief conversation with Ms. Brake who confirmed to her that she had been punched by the police while they were arresting her son.

Evidence of Christine Brooks

Christine Brooks lives at Sesame Street on the Indian Brook Reserve, near the home of Mr. Peter-Paul. Christine Brooks is the grandmother of Tamara Peter-Paul. On the day in question, she had walked over to Mr. Peter-Paul's store while he was outside "making a scene". She said that he was hollering and going on, and that when she asked his wife about his behaviour, she was told that he was intoxicated. She testified that he was out waving a bottle, and was swearing and yelling at the top of his lungs. She indicated that she never did get to the store, as she became frightened and returned to her home.

She attempted to phone the police, but her telephone was malfunctioning. She approached her neighbour across the street, Annie Benoit, and asked her to place the call on her behalf.

Evidence of Annie Benoit

Mrs. Benoit lives at Sesame Street at the Indian Brook Reserve which is near Mr. Peter-Paul's residence. She is considered an "elder" in the community, a position of respect. On the day in question, she was approached by Christine Brooks, a neighbour, to call the police because she was concerned about Mr. Peter-Paul's behaviour. Mrs. Benoit went to her back veranda to complete hanging out her wash. Her veranda is in a direct line to Mr. Peter-Paul's residence, and she could see him on the steps ranting and raving. She said that he was hollering and swearing, and she assumed that he was intoxicated.

Mrs. Benoit called the police and asked them to attend at Mr. Peter-Paul's residence. While she denied specifically telling the police that Mr. Peter-Paul had a gun, she did admit that others were saying that Mr. Peter-Paul may have a gun.

She also testified that there was a large crowd of between 25 and 30 people assembled in Mr. Peter-Paul's yard, although she was confused as to the precise time when this crowd may have begun to gather. She also testified that Mr. Peter-Paul had something in his hand which was likely a bottle, and that he was waving it about. In a written statement, she indicated that he had something in his hand and heard him say "see, see, I'll even shoot myself".

Mrs. Benoit is the mother of Elizabeth Michael, wife of Joe Michael, and Sally Gehue, who also witnessed some of the events on the day in question.

Evidence of Sally Gehue

Ms. Gehue lives on Sesame Street in the Indian Brook Reserve near the home of Mr. Stephen Peter-Paul. She had testified that she arrived home on the day in question at approximately 2:10 p.m., and went to the bus stop in front of Mr. Peter-Paul's store to pick up her 14-year-old daughter. She had been waiting on the lawn of a neighbour directly across from Mr. Peter-Paul's residence. She saw Mr. Peter-Paul out on his front steps,

loudly cursing and swearing and hollering at people on the ground below. She said that his language was vulgar, and that he had a bottle in his hand from which he appeared to be drinking.

Her residence is very near to Mr. Peter-Paul's home and she went back to her residence before returning to the same area to wait for the bus to pick up her nephew. She testified that at one point, Mr. Peter-Paul was down in front of the store banging his fist on his mother's car while his mother, Theresa Brake, was trying to calm him down. She offered no evidence as to how Mr. Peter-Paul was arrested, or whether Ms. Brake was struck by the police officers.

Evidence of Roger Bernard

Mr. Bernard lives on the Indian Brook Reserve and operates a small store at the opposite end of the Reserve to that of Mr. Peter-Paul. On the day in question, he was parked in his truck on the opposite side of the street from Mr. Peter-Paul's residence. He had been waiting for his children to arrive on the bus. He had heard Ms. Brake trying to persuade Stephen to go to her house and go to bed. He suspected that Mr. Peter-Paul had been drinking.

He was present when the police arrived, and saw them approach the vehicle where Mr. Peter-Paul was seated. He heard the officer ask about a gun and heard Mr. Peter-Paul's reply. He testified that Mr. Peter-Paul unbuckled his seatbelt and was immediately taken out of the car and was put to the ground. He heard the officer say "you are under arrest for disturbance of the peace".

He described the way the RCMP treated Mr. Peter-Paul as "police brutality". He felt that Mr. Peter-Paul was small in stature and that the three officers were considerably bigger than he was. He felt that native officers would have been less aggressive and would have been more patient in speaking with Mr. Peter-Paul before arresting him.

He testified he saw Ms. Brake get hit, and identified the officer with grey hair and a grey moustache get up and strike her, causing her glasses to come off. He also testified that the same officer said "you fucking Indians are going to get it now". He also testified that Constable Mackin was wearing a hat and that he had lost it during the episode. He also saw Constable Mackin push Anna-Marie Peter-Paul to the ground.

Evidence of Dr. Stewart Montgomery

Dr. Montgomery is a medical practitioner and carries on a general practice of medicine in Stewiacke, a small community near Enfield. He testified that he received a call from the RCMP in the early evening of the day in question. He was asked to examine a prisoner who was involved in an altercation, who was suspected of having taken drugs or alcohol.

When he arrived at the detachment, Mr. Peter-Paul was sleeping. He observed some bruises and lacerations, and a one-inch open cut on the side of his face. He indicated that Mr. Peter-Paul was groggy and irritable; his speech was slurred and he was swearing and cursing and asking the doctor to leave.

He testified that he had not come prepared to suture the laceration, and that he preferred to bring the prisoner back to his office or take him to the hospital. However, he suggested that Mr. Peter-Paul was not his patient, and felt that he was not in a position to instruct the RCMP as to how to treat Mr. Peter-Paul. He said in his evidence "I was a little confused as to why I was there. I have thought a lot about it since...I don't even know whether it was at their discretion or whether it was at Mr. Peter-Paul's request that I be there".

He also examined Mr. Peter-Paul's back, as he was told that the prisoner had been complaining of back pains. He did not come prepared to conduct a neurological examination. He felt apprehensive and concerned that he may be hit given that he was advised that Mr. Peter-Paul could be violent. He did admit, however, that Mr. Peter-Paul's injuries were minor in nature, and he testified that it would be no problem if the police elected to keep him in the cells overnight.

Dr. Trevor Locke

Dr. Locke is a family medical practitioner at the Colchester Regional Hospital. He examined Mr. Peter-Paul and Theresa Brake at his office the morning after the day in question. He testified that Mr. Peter-Paul reported that he had a pain in his left wrist, left shoulder, right and left hips, as well as scratches and abrasions on his upper torso. He also noticed a two-centimetre laceration in his upper lip. The doctor also noticed multiple abrasions on his body and arms, and confirmed that he had a painful left shoulder and forearm.

He declined to suture the laceration, as it would not be practical to do so, since over 6 hours had elapsed since the injury occurred. He also testified that Mr. Peter-Paul requested a prescription for valium, and that when he refused to comply with his request, Mr. Peter-Paul told him that he could buy such drugs on the street.

The doctor also examined Theresa Brake, and confirmed that she had not suffered any significant head injury, although she complained of dizziness and a headache. He did say she had some tenderness on her left temple. He diagnosed her as having a soft-tissue injury on the left side of her head as well as tenderness in her neck, left chest, and left shoulder.

Evidence of Darrell Watson, Charles Purcell and William Arthur Chapman

Charles Purcell was the guard/jailer on duty at the Enfield Detachment on the night in question. He recalled Mr. Peter-Paul being brought into the cell area, and being searched upon his arrival. He recalled him looking like he had been in a fight. He remembered Mr. Peter-Paul as being extremely abrasive and very demanding.

Mr. Purcell arranged for Constable Stephen Michael to attend at the cell because the prisoner had asked for him. He also recalled that Mr. Peter-Paul had asked to see a lawyer, but that such request must be relayed through a member of the RCMP. He confirmed that the only means of contacting a member of the RCMP is by radio, and he is instructed to only do so in case of an emergency. He did not consider a prisoner asking for a lawyer to be an emergency.

Mr. Purcell confirmed that he had kept a prisoner's log and that entries were made in the log at 15-minute intervals. A copy of the log was introduced as an exhibit, which evidenced that Mr. Purcell and Mr. Watson, who relieved him had made observations of the prisoner at such intervals. Mr. Purcell did not consider it unusual for the prisoner to be loud and to be banging on the door of the cell. The log details observations which Mr. Purcell and Mr. Watson made of Mr. Peter-Paul. It indicated that at various times he was either sleeping, pacing the cells, or using the washroom facilities. In one instance, Mr. Watson testified that he saw the prisoner wiping his cut lip and moaning, and then taking his hand and rubbing it back and forth over his mouth.

Mr. Chapman is an RCMP officer, and was on duty at the detachment the night Mr. Peter-Paul was in the cells. He has no particular recollection of the events of the evening and could not say whether Mr. Peter-Paul was intoxicated or not.

Evidence of Alexander Gorman

Mr. Gorman is a member of the RCMP and was qualified as a blood splattering expert. He was shown pictures of the inside of the cell occupied by Mr. Peter-Paul, which showed blood splots and stains on the bench and walls of the cell.

Staff Sergeant Gorman testified regarding 7 separate blood spots or stains that were depicted in the photographs. He concluded that the blood stains were produced after Mr. Peter-Paul began bleeding and that the transfer stain on the wall was consistent with Mr. Peter-Paul making contact with the wall and placing the stain in that location. He felt that there were no associated blood stains present to indicate that force was administered to Mr. Peter-Paul when this transfer stain was produced. He felt that the blood stains on the cell floor were consistent with Mr. Peter-Paul being stationary in the corner of the cell for a period of time and also moving in the cell.

Evidence of Kelly Palmer

Mr. Palmer is a retired member of the RCMP and was the Staff Sergeant at the Enfield Detachment on the day in question. Mr. Palmer was on duty when he was advised that one of his members was responding to a "gun-waving" incident at Indian Brook Reserve. He called the Truro telecom service to monitor the situation and "keep the lines open".

He testified that he called Mr. Peter-Paul's residence and spoke to Anna-Marie Peter-Paul. She confirmed to him that Mr. Peter-Paul was upset because his Aunt was ill. Mr. Palmer asked whether there was a gun and was told that "his wife has guns all locked up". He later called back and spoke to Tamara Peter-Paul, and also asked her about the guns, and was again assured that the guns had been locked away. He had assumed that Mr. Peter-Paul had had a gun, and the guns were taken away from him. This assumption was based on his previous advice that his officers were responding to a gun incident.

During his conversation with Tamara Peter-Paul, he had left the phone to radio the responding members. When he returned to the phone, he had heard 4 or 5 loud bangs, which he thought was gunfire. Prior to that, he had attempted to radio the responding members, to indicate that he had received a report that Mr. Peter-Paul was unarmed but that he should be careful. He did not receive any response to that call.

After hearing what he thought was gunfire, he instructed Staff Sergeant Cornect to get bullet-proof vests, and to accompany him to the scene. While on their way to the car, he received a "10-33 call" from Constable Stothart, indicating that an officer needed assistance. Shortly after leaving for Indian Brook Reserve, they were advised that the episode was over and that they agreed to meet the other officers before returning to the detachment.

Mr. Palmer was present at the cell area when Mr. Peter-Paul was brought in. He testified that Mr. Peter-Paul was extremely intoxicated, that he was ranting at times, he was unsteady on his feet, and his behaviour was very volatile. He went from being quiet to raging and yelling and cursing.

Mr. Palmer was present when Dr. Montgomery arrived in the early evening. He confirmed that Mr. Peter-Paul was sleeping at the time, and was aroused by the doctor. He confirmed that Mr. Peter-Paul began to yell and holler, and that he was concerned about the doctor's welfare. He does not, however, remember any recommendation from the doctor to take Mr. Peter-Paul to the hospital to suture the laceration. He testified that "if any recommendation had been made to me along these lines, I would take it as a direction from the medical officer". He said that if such a recommendation was made, Mr. Peter-Paul would have got medical attention immediately.

Mr. Palmer was aware that Ms. Brake was at the front counter at the detachment and wanted to make a complaint against one of his members. At this point, he had already formed the opinion that Ms. Brake had obstructed the members during the arrest of Mr. Peter-Paul. Because he was concerned about being a witness at a voir dire at a possible trial of Ms. Brake, he instructed one of the other members – either Corporal Jacobs or Sergeant Cornect – to interview her in connection with the obstruction charge. When that interview was concluded, he met with her regarding the complaint. He testified he explained the complaint system to them and how it would be handled. He said that after taking her complaint, he read it back to her to insure that it was correct. He said he had asked

Ms. Brake whether she was injured as a result of the accident, and she indicated that she only had a headache from all of the stress that was involved in the incident.

Mr. Palmer also testified that 25 of the 35 weapons-related investigations by the Enfield Detachment in 1993 were on the Indian Brook Reserve, which has a population of 1100 people. He indicated that there is high incidence of assaults which are much greater in that community than in the general population. While he agreed that statistics should not play a role in how members respond to calls, he did feel that it may influence the way members react to complaints coming from a particular community.

Evidence of Sergeant Richard Wayne Cornect

Sergeant Cornect was on duty at the Enfield Detachment of the RCMP on the day in question. He was present when Staff Sergeant Palmer was despatching the members as a result of the incident at the Indian Brook Reserve. He called Constable Stephen Michael and told him to go over to the scene of the incident.

He said that the RCMP had previous involvement with Mr. Peter-Paul. He felt that the responding members had to apprehend Mr. Peter-Paul and that he had to be taken away to defuse the situation. He felt that they had a very volatile situation based on Mr. Peter-Paul's track record. At one point he said:

> "The end result of my members going out to that detachment was whether they took it upon themselves, and if they hadn't, they would have been directed to apprehend Mr. Peter-Paul and to bring him back to the office to defuse the situation until we got to the bottom of a similar situation that had happened a month before. So if the members had hesitated, what have you, they would have been directed. So, yes, that's going to be the end result. He's going to be apprehended".

When asked to clarify who would direct the members, Sergeant Cornect confirmed he would have given that direction. We found Sergeant Cornect's evidence in this regard quite remarkable, as it clearly demonstrates a lack of appreciation for the arresting provisions of Part XVI of the Criminal Code. Fortunately, there was no evidence he directed the responding officers as he intended.

He was also present when Mr. Peter-Paul arrived at the detachment, and was asked by Staff Sergeant Palmer to locate a physician which he did. He noticed a cut on Mr. Peter-Paul's lip.

He remembered Corporal Jacobs escorting Theresa Brake into his office. Sergeant Cornect confirmed that he was dealing with Ms. Brake on the criminal investigation into charges against her for obstructing the police officers in their arrest of Mr. Peter-Paul, and for damage to property. He advised Ms. Brake of her Charter rights, and she indicated that she

could call a lawyer later. She did confirm to him that she wanted to lay charges against the members involved.

Evidence of Corporal Lindsey R. Jacobs

Corporal Jacobs was on duty on the day in question when Ms. Brake and Tammy Peter-Paul came to the detachment. He was the officer who came from the building and beckoned Ms. Brake and Tamara Peter-Paul back into the detachment after they had left. He said that he had separated Ms. Brake and Tamara Peter-Paul on the instruction of Staff Sergeant Palmer because of the likelihood of charges against Ms. Brake.

He confirmed that he placed Ms. Brake in Sergeant Cornect's office and that he met separately with Tamara Peter-Paul. He gave Tamara Peter-Paul her rights under the Charter, and he recalls that she spoke to a lawyer because he remembers dialing the number for her.

Evidence of Elizabeth Eleanor Michael

Elizabeth Michael is a resident of Indian Brook Reserve, and is married to Constable Joseph Michael, a member of the RCMP. Mrs. Michael is also the daughter of Annie Benoit, and the sister of Sally Gehue. On the day in question, she dropped off Sally Gehue at her house. She noticed that Mr. Peter-Paul was out in front of his house and he was very agitated. She confirmed that he had something in his hand, which appeared to be a bottle of beer.

She was concerned about Mr. Peter-Paul's behaviour to the extent that she called the Reserve's band office, and spoke with a Noreen Knockwood and asked if she would call the school to get the bus diverted because she noticed that there were a lot of vehicles near Mr. Peter-Paul's store. She then called the Enfield Detachment of the RCMP to advise them of the situation, but was told that they were already aware of the incident.

Evidence of Eleanor Margaret Michael

Mrs. Michael lives at the Indian Brook Reserve, and is married to Constable Stephen Michael. She remembered driving her husband to Mr. Peter-Paul's home so he could assist in responding to the complaint. Mrs. Michael confirmed that there was a large crowd at the scene yelling and swearing at her and her husband. When she arrived, Mr. Peter-Paul was being placed into the rear of the police car.

Evidence of Constable Stephen Michael

Constable Michael is a member of the RCMP, and is stationed at the Enfield Detachment of the RCMP. He confirmed that he was contacted by the Enfield Detachment on the day in question and asked to respond to an incident on the Reserve. He was initially mistaken as to the location of the incident and thought it had occurred at another location. Accordingly, he had asked his wife to drive him. When they got to the intersection of the street a short distance from his home, he saw the incident occurring in front of Mr. Peter-Paul's store. He

parked his vehicle, and proceeded to the store area. He testified that he was confronted by Genevieve Paul and her daughter and others who swore at him and called him vulgar names. He was asked by Constable Frank Mackin to approach those who were involved and indicate to them that they were obstructing the police officers. He confirmed that he was approached by Ms. Brake and was told that she was assaulted by Constable Stothart. He advised her to take this up with Staff Sergeant Palmer. He also confirmed that Anna-Marie Peter-Paul indicated that she was also pushed. He felt that the situation when he arrived was very much out of control.

Constable Michael testified at length about the cultural differences regarding his community's reaction when confronted by police. He indicated that "my people from my community fight, they do not go peacefully, you have to sort of grab them and force them into the police car. A normal individual once placed under arrest, he or she will go voluntarily. This wasn't the case." He said it was not uncommon for abusive language to be used, and indicated that this was the way many members of his community reacted in expressing their anger. He also felt that he had a better aptitude for dealing with members of his community as he could speak with them and diffuse their anger.

He also testified that he saw Stephen at the lock-up at the Enfield Detachment. He said that he was very upset, and was full of anger. While he was not intoxicated when he was speaking with him, it appeared as if he had been intoxicated previously and was now becoming sober. He said he was more upset than intoxicated and he had to be calmed down. He confirmed that Mr. Peter-Paul expressed concern about his Aunt's illness and was concerned about his wife. He also confirmed that Mr. Peter-Paul wanted to get out of jail and there was some discussion of suicide. He expressed that talk of suicide was quite common in his community, but he felt that after speaking to Mr. Peter-Paul, the risk of suicide had subsided.

Constable Michael spoke at length regarding his relationship with Constable Frank Mackin. He gave very compelling evidence about Constable Mackin's interest in the native community and his attempt to become more sensitive to native customs. He indicated that Constable Mackin came to the community on a regular basis, and felt that Constable Mackin had become a better police officer in the native community as a result of this. We were very impressed with Constable Michael's evidence and place considerable weight on it.

Evidence of Bernard Sylliboy

Mr. Sylliboy testified that he was travelling down Hollywood Street near Mr. Peter-Paul's residence. He could see an unusual number of people at Mr. Peter-Paul's home, and noticed that Mr. Peter-Paul was sitting in the passenger seat of his brother's car. As he drove to leave the Reserve, he noticed the police. When he stopped to speak with them, they asked him whether he had seen Stephen Peter-Paul. He advised them as to where he had seen Mr. Peter-Paul, but confirmed with them he had seen no firearms.

Evidence of Constable Gower James Fiander

Constable Fiander is a member of the RCMP and had spent over 20 years in the RCMP before April of 1994. On the day in question he was on highway patrol in the Enfield area when he overheard a radio conversation between Constables Keith Stothart and Frank Mackin. He asked whether they needed his assistance, and they all agreed they would meet him in an area called The Meadows at the entrance to the Indian Brook Reserve. At the meeting, he was informed by Constable Keith Stothart that Stephen Peter-Paul was apparently causing a disturbance and waving a gun near his residence. Constable Fiander had been aware of a previous gun complaint involving Mr. Peter-Paul, and informed the other officers of this. During their meeting at the Meadows, Mr. Bernard Sylliboy had stopped and told the officers that Mr. Peter-Paul was a passenger in a black car parked in his yard immediately in front of his store.

He described how the three officers arrived at Mr. Peter-Paul's residence in two marked police cars. He told how Constable Stothart went to the door of the car, Constable Frank Mackin was near the rear of the car, and that he was 5 or 6 feet behind. He heard Mr. Peter-Paul speak in a loud, aggressive tone, swearing, and said he was going to the liquor store and that the RCMP officers could not stop him. Constable Fiander described Mr. Peter-Paul as having a flushed face, his eyes were bloodshot, and he was extremely agitated and not in control of himself. He said that he was hollering and swearing, and that he was frothing at the corners of his mouth.

He said that Constable Stothart was approached by Theresa Brake, and that they had a brief conversation, although he could not hear precisely what they were saying. He said that Mr. Peter-Paul continued his aggressive language in his direction.

He noticed that Mr. Peter-Paul had taken off his seatbelt, and was opening the door. He described how Mr. Peter-Paul was getting out of the car and had placed his feet on the ground. At that point, he said that Constable Stothart took Mr. Peter-Paul to the ground. As he got out of the car, he heard the words "I suppose you want to fucking search me now". He heard one of his fellow officers say "you're under arrest". As the incident unfolded, he saw a crowd gathering. While Mr. Peter-Paul was on the ground, he confirmed that his right hand was underneath him, and that he was resisting the officer's attempt to get it out from underneath him and into the handcuffs.

He remembered a woman in pink pants being pushed to the ground by Constable Mackin. He also confirmed that Constable Stothart had lost his balance and fell forward. He could not say when Constable Stothart lost his glasses. He said that after Constable Stothart regained his balance, he used his portable radio to call for assistance.

Constable Fiander testified that he did not see any contact between Constable Mackin and Ms. Brake. In his statement given to Staff Sergeant Burke and entered as an exhibit in this inquiry, and during his evidence at the trial of Theresa Brake, the transcript of which has been entered as an exhibit in this inquiry, Constable Fiander suggested that there was an

encounter between Constable Mackin and Theresa Brake. In his testimony, however, he now suggested that the lady he described as wearing the white Northern Reflections T-shirt, the lady wearing the glasses, and the lady wearing the pink jogging pants, were all one and the same individual, which he believed to be Ms. Brake. Hearing the evidence previously given in this inquiry, Constable Fiander now knew the woman in the pink jogging pants was not Ms. Brake, and accordingly he cannot confirm that Constable Mackin ever struck Ms. Brake. Constable Fiander was questioned at length regarding this discrepancy. He insisted, however, that he did not see any contact between Constable Mackin and the woman he now knows as Theresa Brake. Although, the statement given to Staff Sergeant Burke, and the evidence given at the trial of Ms. Brake clearly suggests that Constable Fiander had seen some encounter between Constable Mackin and Ms. Brake.

He testified that when Mr. Peter-Paul was taken to the car he stumbled and fell and hit his lip on the door, causing it to be cut. He also saw an encounter between Constable Mackin and Frank Smith, but did not see Constable Mackin attempt to arrest Ms. Brake and place her in the car.

Evidence of Constable Keith Stothart

Constable Keith Stothart is a member of the RCMP and was stationed at the Enfield Detachment in April of 1994. He was the officer who received the call from Annie Benoit regarding her complaint about Mr. Stephen Peter-Paul's behaviour. He said Mrs. Benoit described how Mr. Peter-Paul was on the front steps of his residence and he was screaming and hollering and creating a disturbance. While he is not exactly sure what words she used, he was under the clear impression that there was a handgun involved and that he was waving this gun around and that shots were possibly fired. He remembered that Mrs. Benoit was calling on behalf of somebody else.

He contacted Constable Mackin and asked him to come to the detachment and they both drove to Indian Brook together after calling the Truro telecom to contact Mrs. Benoit to get an update. They left the detachment at 2:20 p.m. Enroute to the Reserve, they got another call from the Truro telecom to the effect that Mr. Peter-Paul was walking downstairs saying "I'm going to shoot myself".

As they proceeded to the Indian Brook Reserve, they received a call from Constable Fiander volunteering assistance. They arranged to meet Constable Fiander near the Reserve. Subsequently, they were advised by Staff Sergeant Palmer that Mr. Peter-Paul was seen on a bicycle. As a result, they patrolled through the Reserve making inquiries, but when they did not locate him they left the vicinity to locate in an area called The Meadows near the entrance to the Reserve.

There they met Constable Fiander who confirmed that Constable Fiander had been involved with Mr. Peter-Paul previously in a gun complaint. Constable Stothart also testified that many complaints include references to guns so that police will respond faster, but that such

complaints are often without foundation. He did not recall hearing Staff Sergeant Palmer advise that Mr. Peter-Paul was unarmed but to be careful in any event.

After the officers were advised by Mr. Sylliboy that Mr. Peter-Paul was in a car next to the store, they left the Meadows to arrive at Mr. Peter-Paul's residence.

He recalled approaching the vehicle and asking Mr. Peter-Paul about the gun complaint. Mr. Peter-Paul immediately denied having a gun, and was verbally aggressive and loud to the officer. Constable Stothart described Mr. Peter-Paul as not acting rationally, said his eyes were wide open, and that he was frothing. He said that his approach was professional and quiet, and that he repeated his questions to Mr. Peter-Paul before receiving an aggressive response.

He recalled being approached by Theresa Brake who identified herself as Stephen Peter-Paul's mother. He asked her about the guns, and she indicated that the guns had been put away. He was left with the impression that there was a gun present that day, and that the gun was taken away from Mr. Peter-Paul and was put away. During his conversation with Ms. Brake, Mr. Peter-Paul continued to be verbally aggressive with the other officers.

While he was talking with Ms. Brake, he heard the car door open. Constable Stothart, turned around and made eye contact with Constable Mackin, and each exchanged glances and Constable Stothart nodded his head, conveying to Constable Mackin his desire to arrest Mr. Peter-Paul. As Mr. Peter-Paul started to exit the vehicle, Constable Mackin took Mr. Peter-Paul by the right arm, and as he moved to the end of the door, Constable Stothart grabbed his left arm and both officers pulled Mr. Peter-Paul immediately to the ground. He said "you're under arrest for disturbance". He indicated that he did not definitively decide to put Mr. Peter-Paul to the ground at first, but that when he grabbed his arm, Mr. Peter-Paul tensed up and was not compliant. He was taken immediately to the ground.

Constable Stothart described how he was in a kneeling position on the side of Mr. Peter-Paul with his back to the store and facing the street. He recalled being pushed off balance, falling forward onto Mr. Peter-Paul, but was able to recover his balance and when he looked behind him he saw Theresa Brake. He recalled that it was a sufficient push to draw him off balance, but he did not actually see her push him. At this point, he had grave concerns about his safety, the safety of Mr. Peter-Paul, and the safety of the other police officers. He believed that he was pushed intentionally in order that Mr. Peter-Paul could escape. When he regained his balance, he called a code 10-33 on his portable radio signifying that an officer needed assistance. At the same time, the officers struggled to get Mr. Peter-Paul's other arm from underneath his body.

He said that during the struggle, his eyeglasses fell to the ground on the opposite side of Mr. Peter-Paul. He saw Ms. Brake walk over to the glasses, pick them up, and he told her to give them back to him. He said that she twisted the glasses and threw them to the ground.

The testimony of Constable Stothart is similar to that of Constable Fiander. While he admitted that in his previous statements it is suggested that there was an encounter between Constable Mackin and Ms. Brake, he now felt that he was mistaken in his former belief. He testified that he did not see any contact between Constable Mackin and the woman he now knows to be Ms. Brake. Like Constable Fiander, he believed that the woman he previously described as Ms. Brake, and the woman in the pink jogging pants who was pushed by Constable Mackin, were one and the same person. He testified that he did not actually see Constable Mackin push the woman in the pink jogging pants, but only saw this same woman staggering and falling backwards near Constable Mackin. He did confirm that Constable Mackin and Frank Smith squared off in a fighting stance, but that no blows were exchanged.

He said that as Mr. Peter-Paul was being placed in the police vehicle, he moved his head abruptly and struck his head on the car door. Constable Mackin put his hand on the top of his head, and guided him back into the police car. He disagreed with Constable Fiander that he cut his lip when he hit the car door. He maintained that Mr. Peter-Paul cut his lip when he went face down to the ground during the arrest.

Evidence of Constable Frank Mackin

Constable Mackin confirmed that he was called by Constable Stothart to assist in responding to a call about an incident at Mr. Stephen Peter-Paul's residence. His evidence is identical to that of Constable Stothart until the officers arrived at Mr. Peter-Paul's residence.

He recalled that as the officers approached the vehicle, he was standing near the rear panel on the passenger side of the car in which Mr. Peter-Paul was seated. He heard Constable Stothart advise Mr. Peter-Paul why they were there and the nature of the complaint. He heard Mr. Peter-Paul's response, and remembered him cursing and swearing, and recalled that Mr. Peter-Paul would not listen to what the officer was saying.

He remembered that Mr. Peter-Paul started to get out of the vehicle, and that he could "feel a fight starting". He did not see a firearm, but he was aware of the allegations and was fearful of the unknown. He said that he exchanged glances with Constable Stothart, and that Mr. Peter-Paul was arrested and taken to the ground. Constable Stothart was on the left side of Mr. Peter-Paul, and Constable Mackin was on the right side kneeling on the ground trying to get his arm out from underneath him. He had both knees on the ground. He remembered that the crowd was hollering, and that there were more people gathering as the incident ensued. He recalled a woman in pink pants coming toward him from his right side. He testified that he put his hands up and pushed her back and she fell to the ground. He also remembered that Theresa Brake jumped into the arrest area and was interfering with the officers attempting to complete the arrest. He described Theresa Brake as jumping onto Constable Stothart's back. He said "she was right in there". He said that she was interfering and hollering, although he could not recall her exact words.

He did not know Ms. Brake's precise identity at the time, although he did distinguish between her and Anna-Marie Peter-Paul (the woman in the pink jogging pants). He also confirmed that he took Ms. Brake by the arm toward the police car, but was interrupted when confronted by Frank Smith.

He denied that he ever pushed or punched Ms. Brake, and described the allegation as "an outright lie". He maintained that it is not possible that he hit her, and is insistent that it did not happen. He denied the allegation that he said "you fucking Indians are going to get it now", and he denied any involvement with Genevieve Paul, as she suggested in her evidence. He also testified that neither Constable Stothart or Constable Fiander struck Ms. Brake.

Evidence of Staff Sergeant Donald A. Burke

Staff Sergeant Burke was with the RCMP in Truro and acted as a Section NCO with the Truro subdivision of the RCMP. He was asked to do an investigation into the two complaints which are the subject of this proceeding. He interviewed the complainants, and the subject members together with other witnesses to the incident. He filed a report with respect to each complainant, which concluded that the complaints should be dismissed. Particularly, he concluded that the officers had reasonable and probable grounds to effect an arrest upon Mr. Peter-Paul, and that any injuries he sustained were not intentionally administered to him. In any event, he concluded his injuries were not serious, and consisted only of bruises and scrapes.

With respect to the complaint of Ms. Brake, he concluded that she was interfering with the arrest procedure of her son Stephen Peter-Paul. He did, however, conclude that Ms. Brake had been pushed by Constable Mackin as a result of her interference. He found, however, that she was not punched as alleged, but only pushed.

Staff Sergeant Burke concluded that it was his impression from interviewing all the witnesses that there were two separate incidents; one involving Constable Mackin and Ms. Brake, and another between Constable Mackin and Anna-Marie Peter-Paul. At no time was he given the impression when interviewing any of the officers that Ms. Brake and the woman in the pink jogging pants were one and the same person. Staff Sergeant Burke concluded that any pushing or any contact by Constable Mackin was unintentional.

Evidence of Chief Reginald Matthew Maloney

Chief Reg Maloney is the Chief of the Indian Brook Band. The Band consists of approximately 1700 Mi'Kmaq people located on 4 reserves at Indian Brook, Grand Lake, New Ross, Pennal and Dodds, the latter location not being populated. Indian Brook is the largest of the reserves, where approximately 1200 people live. Chief Maloney testified that he had served six 2-year terms as Chief.

Chief Maloney testified that he had never been satisfied with RCMP policing, and that he favoured native policing on the Reserve. He had considerable concern regarding response time by the RCMP to complaints at Indian Brook. He indicated that he was involved in establishing a satellite office of the RCMP, which is now located on the Reserve but was not present at the time of the incident in April of 1994. He also indicated that there are now 6 native police officers assigned to Indian Brook Reserve at the time of the hearing. He did confirm that there has been an attempt to have more contact between the Band and the RCMP to insure that the Reserve was fully policed at all times.

Evidence of Dale Sylliboy

Mr. Sylliboy is a Mi'Kmaq native who was qualified by the panel as an expert to give evidence in the area of policing matters, and in particular native policing issues, and issues involving stress on police officers. Mr. Sylliboy had attended Atlantic Police Academy in 1980 and worked for the Truro Police from 1980-1992, including 6 years as a police officer at Millbrook First Nation. He presently works with the Community Information Facility. He is also on the RCMP Aboriginal Advisory Committee.

Mr. Sylliboy spoke at length regarding native and tribal policing. He felt that tribal policing is not appropriate at the present time because there are not enough aboriginal members capable of assuming management roles in their own police force. He did, however, feel that policing on the Indian Brook Reserve needed to become more community-based, and that there should be less emphasis on enforcement. He felt that there needs to be a desire to make police officers friendly faces in the community.

Mr. Sylliboy also commented upon the level of stress which police officers experience when responding to complaints, and especially to domestic complaints involving firearms and alcohol. He also commented upon the reaction of police to incidents occurring at segregated communities. He described the concept of "tunnel vision", where in some incidences police have stereotypical responses to situations in such communities.

He offered his opinion as to what alternative responses could have been made in the situation involving Mr. Stephen Peter-Paul. He suggested that the language used by Mr. Peter-Paul was common in his community and that an effort to talk with Mr. Peter-Paul and his family to defuse the situation would have been more appropriate. He left the impression that the officers in this particular case had acted summarily when arresting Mr. Peter-Paul. He did, however, confirm that the take-down arrest procedure is used when there is any indication that there may be resistance from the suspect.

He also suggested that he would have reacted differently with respect to the confrontation with Ms. Brake. He suggested that she should have been verbally repelled, unless it was determined that she was deliberately trying to interfere with the arrest.

Mr. Sylliboy presented his evidence in a professional and informed manner. We were impressed with his evidence as it provided valuable insight into how police officers react in stressful situations.

7. FINDINGS OF FACT

a) Findings with respect to the complaints by Stephen Peter-Paul

When Stephen Peter-Paul arrived home on the day in question he was tired and upset, partly because of the unexpected illness of his Aunt. Before arriving at home, he stopped at a nearby liquor store and purchased a one-pint bottle of vodka. He intended to drink the alcohol and go to sleep. We find that he began drinking upon his arrival at home, and consumed most if not all of the pint bottle of vodka. He became intoxicated.

As a result of the combination of his tiredness and his consumption of alcohol, he became agitated and upset. An argument between him and his wife ensued, and at different times he was yelling, hollering, and swearing at his wife, children, and others who congregated near his residence.

We find that he was out on his veranda at different times and around his yard waving his arms and causing a disturbance in his neighbourhood. In particular, he was waving the pint bottle of alcohol – which was a solid black bottle – and could have easily been mistaken for a firearm.

We accept the evidence of Annie Benoit, Christine Brooks, and Sally Gehue as to Mr. Peter-Paul's behaviour prior to the arrival of the police, and when their evidence conflicts with that of Mr. Peter-Paul and the others at his home, we prefer their evidence. The evidence of Mr. Peter-Paul and his family on the issue of his sobriety is not credible given Mr. Peter-Paul's own testimony of how much alcohol he consumed, and the manner of his drinking. Also, because of the state of his intoxication, we have discounted most of Mr. Peter-Paul's other evidence.

While it is not clear from the evidence that Christine Brooks specifically mentioned that Mr. Peter-Paul had a gun in his possession, we are satisfied that Constable Stothart, who received the call, was advised that there was or may have been a gun. The officers proceeded on the basis that there was a possibility of a gun, and did so properly. We have concluded that the officers did not think there was actually a gun in Mr. Peter-Paul's possession, but that the presence of a gun was a possibility and that was a factor in how they approached Mr. Peter-Paul and also in their decision to arrest him.

When Constable Stothart approached Mr. Peter-Paul, he was in the passenger's side of the vehicle occupied by his brother Christopher Paul. He immediately advised Mr. Peter-Paul of the reasons for their presence, and in particular made inquiries regarding the gun complaint. We find that Mr. Peter-Paul's attitude and demeanour, and the language he used in response to the officers' inquiries, was abusive and inappropriate. We find that his

aggressive behaviour contributed to the incident that followed. Mr. Peter-Paul made it very clear in his response that he did not want the RCMP on his property, and he repeated three times the words "get the fuck off my land". We find that Mr. Peter-Paul's behaviour was partly induced by alcohol, and that he was in an intoxicated state.

We find that Mr. Peter-Paul was in the process of exiting the vehicle when his left arm was grabbed by Constable Stothart. Whether his feet had touched the ground or he had simply taken off his seatbelt and begun to unlatch and open the door is unclear. We are, however, satisfied in any event, that Mr. Peter-Paul was intending to leave the vehicle and was in the process of doing so. We accept the evidence of Keith Stothart in his detailed account of how Mr. Peter-Paul was arrested. In particular, we find that once Mr. Peter-Paul had made his intentions known to leave the vehicle, the officers had a reasonable belief that a confrontation might ensue. Consequently, Constable Stothart and Constable Mackin exchanged glances to indicate that Mr. Peter-Paul would be arrested. We do not accept Mr. Peter-Paul's implied suggestion that he was exiting the vehicle to be searched at the request of the officers.

We find that a combination of Mr. Peter-Paul's aggressive and abusive behaviour, and his anticipated physical resistance, led Constables Stothart and Mackin to believe that Mr. Peter-Paul would not be compliant, and that this was the basis of their split-second decision to effect a take-down arrest.

Mr. Peter-Paul continued with his non-compliant behaviour, and resisted the officers in their attempt to remove his arm from underneath his body when engaging the handcuffs. The difficulty in effecting this manoeuvre was compounded by the weight of Mr. Peter-Paul's body on his arm and the officer's knee upon his back, which is a necessary part of the take-down arrest procedure.

We also find that Mr. Peter-Paul's head was not being driven into the gravel as some had alleged, but was being held by Constable Fiander in an attempt to bring him under control. Any abrasions to his face or upper torso were caused by his attempt to move his head and upper body upright. The cut in his upper lip was most likely caused upon the impact when he first was brought to the ground or while he was struggling on the ground.

From the moment that the police arrived until Mr. Peter-Paul was placed in the vehicle, further members of the community gathered. Many people were shouting and yelling insults towards the responding members of the RCMP, including the use of obscene and vulgar language. Many members of Mr. Peter-Paul's family who were at his home on that day were running around and confronting the arresting officers. All of this contributed to a chaotic atmosphere, which heightened the officers' sense of urgency and expediency in completing the arrest and leaving the area.

Mr. Peter-Paul continued to make his opposition known to the police action when he was taken to the rear door of the police car. We find that he hit the temple area of his head against the door frame of the police car while being placed in the rear seat, but cannot

conclude that this was an intentional action by the police officers. After being placed in the car, he began to hit his head on the plexiglas separating the front and rear seats often referred to as the "silent patrolman".

Mr. Peter-Paul was taken to the Enfield Detachment of the RCMP and placed in the cells. We find nothing inappropriate about the manner in which Mr. Peter-Paul was brought to the detachment or introduced into the cell area. We find that there is no credible evidence to support Mr. Peter-Paul's assertion that there were any racial slurs or remarks made toward him. We also conclude that he was not thrown against the wall as he has suggested, and find that there is no evidence that any of the injuries that he incurred were caused by anything that happened in the cells.

b) Findings of Fact re: Complaint of Theresa Brake

When the RCMP members arrived at the scene, Constable Stothart, after speaking with Mr. Peter-Paul spoke to Theresa Brake who identified herself as Stephen Peter-Paul's mother. We find that Constable Stothart knew who she was and could distinguish her from the other participants notwithstanding the relative confusion that existed there. We find that Theresa Brake injected herself into the arrest area, and interfered with the officers' attempt to effect the arrest of Stephen Peter-Paul in a continued effort to have the officers wait for a native constable and to persuade the officers to allow her son to be released to go to her home. We find that Ms. Brake, prior to the arrival of the police, was attempting to persuade her son to go to her home to sleep because he was intoxicated, upset, agitated, and arguing with his wife and generally creating a scene in the community.

We find that Theresa Brake, in an effort to get Constable Mackin's attention and to have the police reconsider removing her son, pushed into Constable Stothart who was balanced on his toes while kneeling down trying to handcuff Mr. Peter-Paul. In the result, she accidentally caused him to lose his balance. She was pushing on Constable Mackin's shoulders to get his attention. We have concluded that her efforts were assertive but fell short of wilfully obstructing the officers. She was concerned about her son, and wanted to persuade the officers to stop the arrest. We also conclude that Ms. Brake was hit or pushed by one of the officers such that she lost her glasses and fell backwards toward her daughter-in-law. A full account of our findings regarding this issue is included in the next section of this report.

Constable Mackin admitted to taking Ms. Brake by the arm towards the police car before being interrupted by Frank Smith. We find that Constable Mackin was moving Ms. Brake out of the immediate area to stop what he determined was her interference with the arrest procedure. This was not an improper or excessive use of force by Constable Mackin.

8. ISSUES

a) Was the arrest of Stephen Peter-Paul lawful?

The powers of arrest by a peace officer are included in section 495(1) of the Criminal Code. It provides as follows:

495. (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
(b) a person whom he finds committing a criminal offence; or
(c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found

(2) A peace officer shall not arrest a person without a warrant for

(a) an indictable offence mentioned in section 553,
(b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
(c) an offence punishable on summary conviction,

in any case where

(d) he believes on reasonable ground that the public interest, having regard to all circumstances including the need to
(i) establish the identity of the person,
(ii) secure or preserve evidence of or relating to the offence, or
(iii) prevent the continuation or repetition of the offence or the commission of another offence,
may be satisfied without so arresting the person, and
(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

(3) Notwithstanding sub-section (2), a peace officer acting under sub-section (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

(a) any proceedings under this or any other Act of Parliament; and
(b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

The Supreme Court of Canada interpreted the words "finds committing a criminal offence" in s. 495(1)(b) to mean "apparently finds committing a criminal offence" – see *R.* v. *Biron* 23 C.C.C. (2d) 513.

When the three police officers arrived at Mr. Peter-Paul's residence, there was no apparent offence being committed. It has not been suggested that the basis for the officers' arrest was their belief that an indictable offence had been committed. The remaining issue then is whether Mr. Peter-Paul had "apparently" committed a criminal offence while he was being questioned by Constable Stothart.

Section 175 of the Criminal Code includes the offence of causing a disturbance. It provides in part as follows:

175. (1) Everyone who

(a) not being in a dwelling house, causes a disturbance in or near a public place,

(i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,

(ii) by being drunk, or

(iii) by impeding or molesting other persons, ...

is guilty of an offence punishable on summary conviction.

(2) In the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance described in paragraph (1)(a) or (d) or an obstruction described in paragraph (1)(c) was caused or occurred.

Section 175(1)(a)(i) requires proof of an externally manifested disturbance of the public peace, in the sense of interference with the ordinary or customary use of the premises by the public. An interference with the ordinary and customary conduct in or near the public place may consist of something as small as being distracted from one's work, but this interference must be present and must be externally manifested. The disturbance must be one which may reasonably have been foreseen in the particular circumstances of time and place: *R.* v. *Lohnes* (1992), 69 C.C.C. (3d) 289 S.C.C.

The car in which Mr. Peter-Paul was seated was parked in front of the arcade and store which he operated, and was in a public place within the meaning of this section of the Criminal Code. There is no doubt that Mr. Peter-Paul's responses to the inquiries made by Constable Stothart constituted swearing and the use of obscene language as those terms are

used in section 175 of the Criminal Code. We find that Mr. Peter-Paul's conduct by swearing and the use of obscene language could be said to have caused a disturbance to the members of the RCMP who were conducting their investigation and to other on-lookers. Accordingly, the arresting officers "apparently" found Mr. Peter-Paul committing a criminal offence and were entitled to arrest him providing they did not use excessive force. We also conclude that Mr. Peter-Paul's exit from the vehicle coupled with his abusive and aggressive behaviour gave the officers reason to believe that a physical altercation may ensue and, together with the possibility of the presence of a firearm, gave them further justification to effect an arrest.

Section 25 of the Criminal Code provides that a peace officer in effecting an arrest is justified in using as much force as necessary for that purpose. This Section is as follows:

> 25. (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law
>
> (a) as a private person,
>
> (b) as a peace officer or public officer,
>
> (c) in aid of a peace officer or public officer, or
>
> (d) by virtue of his office,
>
> is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as necessary for that purpose.

It was agreed in submissions that while "an arrest" may be lawful, it becomes unlawful if more force than is justified is used.

During the hearing, we witnessed a demonstration of the take-down arrest procedure by members of the RCMP at the Enfield Detachment. The take-down arrest procedure involves moving the suspect immediately face down to the ground, with the officer applying his knee to the back of the prisoner, and having his hands brought to his back and the handcuffs applied. Assisting officers would be deployed to keep the suspect still until he was fully subdued. The take-down procedure was recommended in situations where the suspect was non-compliant or offered resistance.

Dale Sylliboy who testified as an expert in policing matters, acknowledged that the take-down arrest procedure was an acceptable method of arrest in cases where the suspect offered resistance or was non-compliant. The three arresting officers had every reason to believe that Mr. Peter-Paul was unlikely to cooperate with them. Indeed, his responses to their initial inquiries were "get the fuck off my land". He was loud and uncooperative. He exhibited signs of extreme intoxication and gave every indication that it was unlikely that he would cooperate with the officers.

We accept the evidence of Constable Stothart that the decision to effect the take-down arrest was not made until the split-second after Mr. Peter-Paul began to exit the vehicle. At this point in time, Constable Stothart testified that Mr. Peter-Paul began to "tense up", indicating that he was offering resistance. Decisions to engage force, are often made instantaneously and without the advantage of lengthy forethought. We find no reason to second-guess Constable Stothart's decision to effect a take-down arrest, providing he was justified in arresting Mr. Peter-Paul, and he used an accepted method of arrest in proper circumstances. We find that he did this.

Other witnesses such as Dale Sylliboy and Constable Stephen Michael suggested that further dialogue by the officers with Mr. Peter-Paul may have avoided the necessity of arresting him and prevented the injuries that ensued. While there is merit in these suggestions, and indeed two officers may approach the same situation in two different ways, that fails to address the real issue at hand; that is, whether this arrest was justified and whether reasonable force was used. We answer both in the affirmative.

By its very nature, a take-down arrest is a violent exercise. Regrettably, the officers did not have the advantage of picking a "soft-landing" for Mr. Peter-Paul. The injuries that he incurred were a natural and regrettable consequence of the take-down arrest in combination with his own efforts to resist the officers.

b) Was Mr. Peter-Paul's head deliberately struck against the door of the police car?

We have found that while Mr. Peter-Paul was being taken to the police car, his head struck the door of the car above the glass window. Many witnesses have testified that the officers deliberately struck Mr. Peter-Paul's head on the door, while Constable Stothart maintains that Mr. Peter-Paul tripped and hit his head prior to being placed in the rear of the vehicle.

We are not satisfied that there is enough credible evidence to conclude that Constable Stothart deliberately struck Mr. Peter-Paul's head against the door. It was Mr. Peter-Paul's own reactions to being in custody that caused his head to be hit. The contact he had with the police car door was an accident.

We feel however, that RCMP officers generally should take particular care when placing prisoners in the police car since in such cases the subject is under the officers' control and they are accordingly responsible to guard against the prisoner becoming injured. In this particular case we have concluded that Mr. Peter-Paul hit his head on the door of the police car entirely as a result of his own actions which could not have been necessarily avoided by any preventative actions taken by these officers.

c) Did Stephen Peter-Paul receive adequate medical treatment?

Staff Sergeant Palmer acted properly and timely in instructing Sergeant Cornect to contact a medical physician to examine Mr. Peter-Paul's injuries. However, Dr. Montgomery was very unclear as to his responsibilities with respect to the prisoner. In his testimony, he

indicated that the prisoner was not his patient, and that he received his instructions from the RCMP before applying any medical treatment.

In contrast, Staff Sergeant Palmer testified if the doctor had indicated his desire to transport Mr. Peter-Paul to the hospital to be sutured, that he would have complied. There is clearly a misunderstanding between members of the RCMP, and in this case, Dr. Montgomery. While Mr. Peter-Paul is in the custody of the RCMP, he becomes *their* responsibility. Staff Sergeant Palmer partly filled that responsibility when he obtained medical attention for Mr. Peter-Paul. However, he failed to properly instruct Dr. Montgomery as to who was responsible for ensuring medical treatment was obtained for Mr. Peter-Paul. Particularly, he failed to clarify with Dr. Montgomery that if he felt that suturing of the laceration was necessary, that he could transport Mr. Peter-Paul to a hospital to have the necessary medical procedure carried out.

We recommend that the RCMP establish a protocol to ensure that any physician attending a prisoner is fully aware that it is the physician's responsibility to make sure that adequate and proper medical treatment, having regard for all the circumstances, is given to the prisoner. In short, the physician should not be confused as to whether his duty is to the RCMP or to the prisoner.

d) Were certain racist remarks made?

While the arresting officers were attending to Mr. Peter-Paul, and getting him into the police car, witnesses have testified that somebody said "you fucking Indians are going to get it now". This remark was attributed to Constable Mackin. The most compelling evidence on this point was from Roger Bernard, who was sitting in his truck near the end of Mr. Peter-Paul's driveway waiting for his children to arrive on the bus. He described how Constable Mackin hit Ms. Brake and had pushed Anna-Marie Peter-Paul to the ground. Then he said "from there I think Constable Mackin must have lost it or something because he said something that he shouldn't have and he put the chase to some other guy...". In his statement, he clearly identified Constable Mackin as saying this remark. Constable Mackin, in his testimony, denied making this remark. The other two officers also denied making the comment, nor did any of the three officers hear the comment being made.

Constable Mackin appears to have been more engaged with the other participants in the incident than any of the other officers. He admitted to pushing Anna-Marie Peter-Paul after she came towards him. He also testified that he took Ms. Brake by the arm and directed her to the police car before being confronted by Frank Smith, who attempted to engage him in a fight. At that point, he released Ms. Brake to confront Frank Smith. Others testified that he had chased Chris Paul who directed words to him after Ms. Brake was struck.

In his testimony, he was also very descriptive of the circumstances that existed during the arrest. He felt that the situation was getting out of control, and was extremely fearful for his safety and the safety of the other officers. Also, his behaviour as generally described suggests that he was more affected by the onslaught of people around the scene and

appeared to be more engaged with the on-lookers than the other officers. As a result, Mr. Bernard's attention was focused on Constable Mackin.

We were very impressed with the evidence of Constable Stephen Michael as to the attitude and interest exhibited by Constable Mackin towards the native community. Constable Michael testified at length about the time that he and Constable Mackin spent together and the interest that Constable Mackin showed in native customs and culture. It is obvious that Constable Michael has respect and regard for Constable Mackin and that Constable Mackin has respect for the native community and its culture.

Because of the compelling evidence of Constable Stephen Michael, we are not persuaded on a balance of probabilities, that Constable Mackin made this remark. It is quite possible that the remark may have been made by others given the number of people reported to have been gathered at the scene. It should also be remembered that the crowd that had gathered around the scene were vocal and were yelling and swearing at the police. Constable Michael testified that when he arrived at the scene he was a victim of abusive and obscene language. It is quite possible that these remarks may have been made by others or some version of those remarks may have been misinterpreted by Mr. Bernard.

At the detachment, Mr. Peter-Paul testified that one of the RCMP personnel said "you're not such a tough warrior now". All of the RCMP personnel present at the lock-up testified that they never heard that remark being made. The only witness to this remark being made was Mr. Peter-Paul. We find that Mr. Peter-Paul was intoxicated when he was locked up, and in any event is not a credible witness. His evidence as to the level of his sobriety in particular, and his testimony regarding the events at his home prior to the arrival of the police, is not credible given the testimony from other independent witnesses. Accordingly, we attribute little or no weight to the evidence of Mr. Peter-Paul as given, and in the face of testimony from other witnesses at the cell area, we are not persuaded that this remark was made.

e) Was Ms. Brake hit by one of the members of the RCMP, and if so, by whom, and was she punched?

We heard many witnesses testify as to whether Ms. Brake was hit or not. We have also had an opportunity to review the many statements which were tendered by witnesses on this subject. Most of the people present at Mr. Peter-Paul's home at the time, and who witnessed the incident, testified that Ms. Brake was hit. Remarkably, all of the police officers testified they did not see Ms. Brake hit and that the officer specifically accused of hitting Ms. Brake, Constable Mackin, was emphatic in his evidence that he did not hit Ms. Brake and that it was not possible that he may have struck her accidentally. He testified that it did not happen.

Theresa Brake testified that she was standing on the left side of Mr. Peter-Paul as he was lying on the ground. She indicated that she was tapping the shoulders of Constable Mackin to get his attention during the arrest. He was kneeling down assisting in the arrest at the time

and that he moved up and punched her on the left cheek, knocking her glasses to the ground and pushing her back into her daughter-in-law Tamara Peter-Paul. Her testimony at the hearing was consistent with that included in her statement and the evidence she gave at her own trial on a charge of obstructing a peace officer in the execution of his duty. She complained almost immediately that she was hit by one of the officers.

Anna-Marie Peter-Paul, the woman in the pink jogging pants, recalls being pushed to the ground herself and that when she got up she could see Theresa Brake on the ground and getting up at the same time. She did not see her get struck. Chris Paul, the son of Theresa Brake, also remembered his mother being struck, but cannot identify the officer. He maintained she was struck with a closed fist from one of the officers who was in a kneeling position.

Genevieve Paul also confirmed that Ms. Brake was hit, and describes Constable Mackin hitting her with a closed fist. However, she locates Constable Mackin between Mr. Peter-Paul and the store, and has him on the opposite side where all the other witnesses located him. She described him as turning around and punching Ms. Brake on the side of the face and she fell into Tamara Peter-Paul and they both fell to the ground. She also described how the same officer pushed Anna-Marie Peter-Paul.

Sandy Brooks testified that Theresa Brake was hit by one of the officers with a closed fist. While he could not identify which officer was involved, he indicated that the officer was between Mr. Peter-Paul and the store, and was facing the street. He indicated that he turned around and struck Ms. Brake, that she stumbled into somebody. However, under cross-examination, he admitted that he was not sure as to where the officer was located relative to Mr. Peter-Paul. Sheena Paul also testified that Theresa Brake was hit by one of the officers. However, she was not clear as to which officer, or as to where he was located. She maintains that she was hit and he "pushed her out of the way". She could not determine whether he had a closed fist or not.

We also received written statements from William John Nevin and from Robert Sack. These statements were admitted by consent of all counsel. However, neither of these gentlemen testified at the hearing. Mr. Nevin, who is the nephew of Theresa Brake, said in his statement that Ms. Brake was pushing on the shoulders of one of the officers, and he punched her in the face. His statement says that he "doubled up" and punched her. In his short statement, Mr. Sack said "one of the cops, the one with the whiter hair, pushed Anna-Marie first. He pushed her down and then he grabbed Theresa and started walking her to the car. She was by the door. He let her go and went after Frankie Smith. I didn't see any of the cops hit her". Mr. Sack is obviously referring to Constable Mackin and a clear conclusion can be drawn from this statement that he did not see Ms. Brake get hit. Neither gentleman was subject to cross-examination.

Roger Bernard testified that he saw Constable Mackin hit Ms. Brake. He maintains that Constable Mackin was standing up at the time, and while it was hard for him to say which

way he hit her, he believed that it was a "quick snap" rather than pulling his fist back before he hit her. He did maintain that the officer struck her with a closed fist.

The evidence from the three police officers through their statements and reports is confusing. In the continuation report prepared by Constable Stothart, he said in part, "Constable Mackin had pushed away Brake as she pushed and shoved at him, and that was when Smith started to get involved". In his statement given on June 1, 1994, Constable Stothart said "I looked around and saw the mother at Constable Mackin's back. I recall him pushing her away, and I believe he took her to the police car. There was a lot of pushing and shoving by other people."

He later described Mr. Peter-Paul's mother as the one who picked up his glasses and twisted them. Further, in his statement, Constable Stothart was asked a series of questions as follows:

> 1) What kind of pushing was involved with Theresa Brake?
>
> Answer: She was pushing on my back and shoulders and I lost my balance over Mr. Peter-Paul.
>
> 2) Do you recall ever pushing or striking out at Theresa Brake?
>
> Answer: No–but I recall seeing Constable Mackin pushing her backwards, because she was pushing at him. (emphasis added)

Constable Fiander in his statement, said "during this time, the lady who approached Constable Stothart in the first instance, was pushing at Constable Stothart. She was approaching Constable Mackin and I noticed him push her backwards".

During the trial of Theresa Brake, Constable Fiander testified at length about the incident in question. He identified a woman wearing a Northern Reflections T-shirt, and wearing glasses (later identified as Theresa Brake) as the person whom Constable Stothart was speaking with after the officers arrived. Later in his testimony he said:

> "During this time, I was at the head of Mr. Peter-Paul and *this lady who Constable Mackin had a previous encounter with*, the same lady wearing the white Northern Reflections T-shirt and wearing the glasses, she pushed Constable Mackin from behind and he sort of went over Mr. Peter-Paul. Uh, after that point, uh, Constable Stothart gained his balance and we continued in our arrest. Uh, shortly after there, just...we're talking seconds I don't know exactly how long, I noticed the same lady down by Mr. Peter-Paul's feet area and she had a pair of glasses in her hand and, uh, the next thing I know I saw her just squash the glasses and Constable Stothart again had some conversation with her." (emphasis added)

Constable Fiander later in his testimony clarified that it was Constable Stothart that Ms. Brake was pushing and not Constable Mackin as he originally testified.

Constable Mackin did not give a specific statement in relation to the complaint of Ms. Brake. He did give a statement in relation to Mr. Peter-Paul's complaint, but it did not address the issue of whether Ms. Brake was hit by him. Rather, the investigating officer Staff Sergeant Burke, used the continuation report prepared by Constable Mackin as his statement. In the continuation report, Constable Mackin writes:

> "While we were doing this, a lady came at me and she had pink jogging pants on and I pushed her back. She was going to attack one of us. Then an older lady later identified as Brake came at Keith from the rear and she attacked Stothart. This happened so quick it was hard to say who was who. Frank Smith guy, big tall guy (native) was mouthing off to me stating that we could not do this. I tried to tell them that they were obstructing the arrest. People were throwing rocks at us (gravel) and there was a large crowd starting to develop. At one point I told Brake that she was obstructing the arrest, and for her to stop or I would put her in the police car. And I told the same to Frank Smith. It seemed to me that Smith wanted to fight with me. Hard to say at that point. However, I never hit anyone. I just remember pushing the one back with the pink jogging pants."

Constable Mackin did not testify at the trial of Ms. Brake. None of the officers testified at the trial of Mr. Peter-Paul. Constable Stothart's testimony at the trial of Ms. Brake did not reveal anything regarding this issue.

In his testimony at the hearing, Constable Mackin maintained that he did not push or hit Ms. Brake in any respect. In this regard, his testimony is consistent with his continuation report and what he had told Staff Sergeant Burke during his investigation. Constables Stothart and Fiander, however, testified that they had been mistaken earlier when they had referred to Constable Mackin pushing Ms. Brake. They both indicated that they were mistaken in describing the woman whom Constable Mackin pushed as being Ms. Brake. They both maintain that they were confused as to the identity of the woman in the pink jogging pants. They mistakenly thought she was Ms. Brake, the same woman with the Northern Reflections T-shirt, and the same woman who was speaking with Constable Stothart after the police arrived.

Admittedly, the statements and the continuation reports prepared by the officers appear only to refer to one instance where Constable Mackin pushed or struck anybody. However, these statements of Constables Stothart and Mackin and the reports repeatedly refer to Ms. Brake as the one who was pushed. It is difficult to understand how these officers could have been confused between Ms. Brake, who had a conversation with Constable Stothart, and who was well-described by Constable Fiander as wearing a Northern Reflections T-shirt, and Anna-Marie Peter-Paul who was admittedly pushed backwards by Constable Mackin. The evidence was that he pushed her in the chest, and presumably if these officers saw that, they

would have been able to distinguish her identity from that of Ms. Brake. It is possible that Constables Fiander and Stothart only saw one incident involving Constable Mackin pushing anyone, and that that was Anna-Marie Peter-Paul. They may have simply not seen any contact between Constable Mackin and Ms. Brake.

It is very difficult to reconcile the evidence of Constable Mackin with that of the other witnesses. He was asked pointedly whether it was possible he may have pushed or hit Ms. Brake accidentally or unintentionally in his efforts to assist in the arrest of Mr. Peter-Paul. He was invited to reflect on the circumstances going on at the time of the arrest; that is, the pushing and shoving which the officers testified existed, the shouting and screaming and rock throwing which were all present at the time of the arrest. However, he was consistent in his testimony that he did not hit Ms. Brake, he could not have hit Ms. Brake, and that it simply did not happen.

Regrettably, Staff Sergeant Burke's investigation did not centre in on the dilemma that is faced by this inquiry. Obviously, Staff Sergeant Burke concluded that the references by Constables Stothart and Fiander to Constable Mackin pushing Ms. Brake was to her allegation that she was punched in the face. He did not attempt to distinguish the push to Anna-Marie Peter-Paul from the alleged punch by Constable Mackin to Theresa Brake. Consequently, when one examines the statements taken in the course of his investigation, and his conclusions, it is unclear what the RCMP members were actually referring to.

The confusion created by the statements given by Constables Stothart and Fiander to Staff Sergeant Burke and their later "clarifications" at the public hearing has made our deliberations on this issue more complicated. It was not known until the last days of the inquiry what the position of the RCMP members was on this topic, i.e. Ms. Brake was not struck or pushed, let alone punched. It would have been preferable had their view been made clear earlier in the inquiry.

The reason for this is not at first apparent. The complainants suggest that Constables Stothart and Fiander tailored their evidence after the fact to favour Constable Mackin. We are not prepared to go this far. However, we do feel these officers were not as clear in their statements as they could have been. Whether this was the fault of the officers, Staff Sergeant Burke, or just a regrettable gap in their statements is not necessary to conclude. Clearly Constables Stothart and Fiander both made assumptions, which they later retracted, as to the identity of those present at the scene. No person should make an assumption when making a statement. Statements or evidence presented as truth, when the person does not know them to be true, only result in confusion. This is what happened here.

Furthermore, had Constable Mackin been asked to give a statement and been required to focus in on this issue, the position of the officers may have been clearer. We accept that Constable Mackin was unable to give a statement because he was on leave for personal reasons unrelated to this matter. However, we do feel that had Staff Sergeant Burke waited to receive a detailed statement from Constable Mackin, the issue would have been clearer.

It is difficult to understand how Constable Stothart could have confused Ms. Brake with Anna-Marie Peter-Paul. He had a conversation with Ms. Brake and was able to identify her as the person who was pushing at his back. In his statement, he referred to her as "the mother". He indicated that Constable Mackin was "pushing her away". He said that Constable Mackin was pushing her backwards because she was pushing at him. There is no evidence that Anna-Marie Peter-Paul was pushing at Constable Mackin. All of the evidence indicates that it was Theresa Brake who was pushing either Constable Stothart or Constable Mackin. Indeed, in Constable Mackin's evidence, he described Ms. Brake as "being right in there", and interfering with the arrest procedure. This strongly suggests that Constable Stothart was referring to Ms. Brake being distinct from Anna-Marie Peter-Paul.

The only independent witness to this particular incident is Mr. Bernard. However, his evidence is not without some difficulty. In particular, in his statement he described Anna-Marie Peter-Paul being punched, while all of the evidence is clear that she was pushed with two hands by Constable Mackin in the chest; although, in his testimony he acknowledged that she was pushed. In different parts of his testimony and his statement, he suggests that the Constable hit Ms. Brake with a closed fist. However, all of his evidence taken as a whole is confusing on this issue. At one point, he said he could not be sure how she was hit. He said in part "It's hard to say which way he hit her". This is a preferable conclusion to his observations.

Mr. Bernard was in his truck on the street some distance from the event. Although he says he can describe how Ms. Brake was hit and who hit her, he is clearly wrong in other aspects of his evidence. We are not prepared to accept his evidence on this issue.

The arrest took place in a relatively confined area between Chris Paul's car, the store, and Theresa Brake's vehicle. Besides Mr. Peter-Paul, those present at some point or other included Theresa Brake, Anna-Marie Peter-Paul, Tamara Peter-Paul, Sheena Paul, Chris Paul, Genevieve Paul, Frank Smith, Sandy Brooks, the three Constables, and a number of school children and other unidentified people. There was yelling and cursing, and people were moving in, out, and around the area. The officers were having difficulty getting Mr. Peter-Paul under control. There was considerable activity existing in the area. It is very likely that Ms. Brake was hit by either Constable Mackin or Stothart, but accidentally, while these officers were carrying out their duties relative to Mr. Peter-Paul. We can conclude however that Constable Fiander did not in any way strike Ms. Brake.

Given the relative confusion and the number of people in this confined area, it is understandable why the evidence is inconclusive as to who hit Ms. Brake. However, the confusion was compounded by the lack of credible testimony we heard. The evidence given by those present at Mr. Peter-Paul's residence was not forthright, especially as it related to Mr. Peter-Paul's sobriety and his antics prior to the arrival of the police. Also, the statements of the police officers included in their written reports and those given to Staff Sergeant Burke, their testimony at the trial of Ms. Brake, coupled with their testimony at this hearing, make their evidence on this point confusing and unreliable.

We have determined that Ms. Brake was struck or pushed; however, she was not punched. If she had been struck with a closed fist, with the force required to repel her in the way that was suggested, it is likely that her injuries would have been more substantial than that disclosed by Dr. Locke in his examination of her the following day.

We have concluded Ms. Brake was hit by an RCMP officer accidentally when she injected herself into the arrest area. This officer was either Constable Mackin or Constable Stothart. The required degree of proof for us to determine that Constable Mackin used improper force as alleged is the civil burden of proof on the balance of probabilities. We have determined that this burden has not been discharged and accordingly the complaint against Constable Mackin should be dismissed.

Theresa Brake was clearly too close to the arrest procedure, and while her intentions may have been honourable in the sense that she was trying to persuade the officers that she had convinced her son to go to her home to sleep, she was improperly injecting herself in a lawful arrest procedure. Once the arrest procedure had commenced, she should have backed off no matter how strongly she felt about the timeliness or appropriateness of the police action.

f) Treatment of Theresa Brake and Tamara Peter-Paul at the Enfield Detachment of the RCMP

We were invited by submissions made at the conclusion of the inquiry to comment upon the treatment accorded to Theresa Brake and Tamara Peter-Paul when they visited the detachment after the incident at the Reserve.

While it was alluded to that Ms. Brake and Tamara Peter-Paul may have had some concerns about the whereabouts of Stephen Peter-Paul, the primary purpose for Ms. Brake's attendance at the detachment was to lodge a complaint about the incident which occurred during the arrest at her son's residence. It is quite clear that Ms. Brake was confused regarding the procedure about making a complaint and/or laying "charges" against the officers who arrested her son. It is also obvious that she was very distrustful of those present at the detachment in receiving and processing her complaint.

It is understandable that there would be confusion regarding the roles of police officers in receiving complaints about criminal conduct by one of the members of the RCMP. Obviously the RCMP cannot investigate its own members in the same way it receives complaints about others. However, this distinction is not obvious to members of the public.

We find that Staff Sergeant Palmer acted professionally when he took Ms. Brake's complaint. He correctly did not interview her regarding the pending charge of obstructing a police officer in the execution of his duty. This was partly because of his stated reason that he did not want to integrate the two processes and hence compromise any statement Ms. Brake may have given him with respect to the pending charges against her. It did, however, allow him to present a certain independence with respect to the taking of her

complaint. We are satisfied that the complaint given to Staff Sergeant Palmer and received by him adequately reflected her concerns which were later identified to us during her testimony at the inquiry.

It is understandable that Theresa Brake and Tamara Peter-Paul may have felt intimidated by the police presence especially as it related to their investigation of the pending charges against Ms. Brake. However, police investigation techniques are designed to be somewhat intimidating and in this case Ms. Brake was the subject of a criminal investigation. There is nothing wrong in the police using such techniques providing these are properly measured to meet the given circumstances which we feel that they were in this case.

We do not feel compelled to recommend any changes or make any adverse comments with respect to the taking of Ms. Brake's complaint to Staff Sergeant Palmer. It is sufficient to say that complainants should be treated with respect and that their complaints received with care notwithstanding that they may be suspects regarding other allegations. We also suggest that those officers dealing with the complaints should not be directly involved with the other investigations which Staff Sergeant Palmer adequately carried out in this case.

However, we agree with submissions made by Commission Counsel that the subject members of the complaints should absent themselves from further investigation of the complainant given such circumstances. The appearance of a bias exists if the officer who is the subject of the complaint continues to investigate the complainant. The integrity of the investigation would be better maintained if another officer, even at the same detachment, took over the investigation until the conclusion of the criminal proceeding. It is unclear what Constable Stothart, the lead investigator in this proceeding, may have done to further advance the investigation. However, we feel that this additional requirement is not too burdensome for the RCMP to insist upon in order to maintain an appearance of fairness with respect to the investigation. These comments however are not intended to suggest that Constable Stothart's desire to prosecute Ms. Brake was improperly motivated or that his belief as to whether a criminal offence had been committed was not properly based.

9. NATIVE POLICING

Many references were made regarding cultural conflict related to policing on this and other native reserves. Throughout the evidence a thread of subtle and somewhat not so subtle allegations were present regarding systemic racist treatment by the white police establishment and in particular the RCMP against native communities. There was a strong suggestion that the subject complaints were directly related to larger native policing issues. We were invited to hear evidence regarding native policing and policing in segregated communities.

We agree that cultural differences which exist are relevant to explaining the backdrop for the incident that occurred and helped to fully define the context in which the events in question happened. It certainly explains the perspective in which the various witnesses viewed the actions of the police officers. These are important considerations and cannot be

ignored and were indeed helpful in our deliberations. Particularly, we found the evidence of Dale Sylliboy to be insightful on the topic of policing in native communities generally and we found the evidence of Constable Stephen Michael about the challenges of policing in his community specifically helpful.

However, our role in this hearing was not to make specific inquiries or findings with respect to this topic. The issue of native policing is complex and requires considerable study beyond the evidence which was presented at this hearing. It would not, therefore, be appropriate for us to make detailed recommendations as to the model for policing in this community beyond some general observations. It should be remembered that we heard only from specific members of the community relative to an isolated incident. Obviously in some quarters there are deeply held views on RCMP policing.

We are charged with the responsibility of inquiring into specific complaints regarding specific conduct. If there are systemic problems with RCMP policing directly related to such conduct, it would be proper for us to comment. However, as is the case here, where these issues, albeit important, are not intrinsically linked to the events in question, findings and recommendations other than of a general observation should be avoided. This is not to say, though, that it would not be more desirable to have native RCMP officers policing this community. We agree there would be advantages to having those officers policing native communities, but this is not a pejorative comment regarding the conduct of the RCMP members in question. In this case, there is simply no evidence that these RCMP officers' conduct was affected or motivated by any prejudiced attitude. Beyond the suggestion that a native officer may have handled this situation differently, there is no evidence directly linking this issue to the subject complaints; while the backdrop is present, the direct link was not established. Consequently we decline to make any *detailed* findings or recommendations regarding the larger issue of policing in native communities.

Clearly those gathered at Mr. Peter-Paul's home, including many of his extended family have a great distrust for the members of the RCMP. It is unclear how widespread or representative of the community these views are. Others who testified seem to suggest otherwise, although it is clear that policing challenges exist in this community to some extent and cultural differences contribute to these challenges.

Obviously, members of the RCMP should be sensitive to cultural differences that exist in native or other segregated communities. They should also be sensitive to prescribed reactions or "tunnel vision" when responding to calls from such communities. In this regard we were particularly struck by the evidence of Dale Sylliboy who commented about police officers' reactions when called to such communities. He indicated that unless officers are sensitive to such tendencies there may be an inclination for officers to approach such situations with "tunnel vision" and be programmed to react in a certain way.

The evidence at the hearing of these complaints suggests that the RCMP are sensitive to these concerns. Indeed Mr. Sylliboy is himself involved as an adviser to the RCMP on such

issues. We would encourage the RCMP to continue sensitivity training as well as cross-cultural training especially as it relates to native communities.

Since the incident, the RCMP have opened a satellite office on the Indian Brook Reserve to help provide a more adequate police presence in the community and improve the RCMP's response time. These were concerns addressed by Chief Maloney and we commend the RCMP for their actions in this regard and recommend they continue such programs.

10. APPLICATION FOR COSTS BY APPROPRIATE OFFICER

The Appropriate Officer seeks costs against the Commission for legal costs and disbursements and other expenses associated with his representation before the Board and the representation of the named members of the RCMP.

The Appropriate Officer relies on subsection 45.45(5) of the RCMP Act which requires the Commission to afford the parties before the hearing a full and ample opportunity, in person or by counsel, to present evidence, to cross-examine witnesses and to make representations at the public hearing. The Appropriate Officer also points out that the Commission has provided some funding to allow the complainants to be represented by counsel. He further submits that the costs incurred by the RCMP would have been avoided if the Commission "exercised its duty and conducted a proper investigation prior to deciding to hold a hearing". He also suggests that such an investigation would have revealed that the investigation conducted by the RCMP was thorough, confident and professional and had the Commission done a further investigation it would have avoided "the attempted public pillorying" of the named RCMP officers.

The Appropriate Officer goes on to submit that the Commission through its counsel supported a motion by the Complainants to require the Appropriate Officer to produce personnel records of the named RCMP officers further suggesting that the inquiry was used to pillory the named members. He also submits that the Commission through its counsel called witnesses and led testimony which was extraneous and irrelevant to the specific complaints which contributed substantially to delaying the hearing. The Appropriate Officer submits that all parties should be treated equally and fairly and, as such, the legal expenses and costs associated with representing the members of the RCMP and the Appropriate Officer should be reimbursed by the RCMP Public Complaints Commission.

We reject the submissions made by the Appropriate Officer. There is no authority in the RCMP Act to award such costs. We do not interpret subsection 45.45(5) of the Act to provide such authority. This subsection simply provides that the parties, of which the Appropriate Officer is one, are entitled to be represented by counsel and to participate fully in the hearing by cross-examining witnesses and making representations. The Appropriate Officer was afforded this opportunity and did, in fact, participate as did the named members in the entire hearing. This subsection, in our opinion, does not give the Commission authority to award costs in favour of the Appropriate Officer, as he suggests.

Furthermore, the panel of members assigned by the Chairman pursuant to subsection 45.44(1) of the Act has no jurisdiction to review the decision of the Chairman either to investigate the complaint further or institute a hearing to inquire into the complaint pursuant to subsection 45.42(3)(c) of the Act as the Appropriate Officer invites us to do.

Notwithstanding the above, we see no merit in any of the submissions made by the Appropriate Officer to award costs in any event. Accordingly the application for costs is dismissed.

11. SUMMARY AND CONCLUSIONS

Stephen Peter-Paul arrived home from work on April 29, 1994 with the intention of drinking and drinking to excess. He became very intoxicated, argued with his wife, and generally created a "scene" at his home, which was apparent to the neighbouring community.

When the RCMP members arrived, Mr. Peter-Paul continued his abusive behaviour and when he began to exit the vehicle the officers were justified in arresting him in the manner they did. The arrest was lawful and the force needed to effect the arrest was reasonable and not excessive. Mr. Peter-Paul struck his head accidentally on the police car when he was being placed in the car by the arresting officers. Most of his other injuries occurred during the take-down arrest procedure. Mr. Peter-Paul's complaints **against all three officers** should therefore be dismissed.

Theresa Brake was struck on the side of the face after interfering with the arrest of her son in an attempt to persuade the officers to wait for a native constable. She was not punched, and this action did not constitute an assault or use of improper force on her. She was struck or pushed by either Constable Keith Stothart or Constable Frank Mackin accidentally during the arrest process. The complaint against Constable Mackin in this regard should therefore be dismissed. The RCMP investigation into this aspect of the complaint was not complete and contributed to the inquiry becoming protracted.

Mr. Peter-Paul was not treated improperly when placed in the cells at the Enfield Detachment or during his overnight stay in the lock-up. The laceration on his lip ought to have been sutured as Dr. Montgomery recommended. Clear direction should have been given to the attending physician at the cell regarding the method of obtaining and carrying out recommended medical procedures for prisoners.

Finally, there are significant challenges for policing, at least in some areas in this community. These challenges are related in part to the cultural differences which are present between the white police establishment, in particular the RCMP, and native communities. Continued sensitivity to these differences, the greater deployment of native constables, and greater police presence in the community will help to address these challenges. A complete examination of the issue of native policing is beyond the scope of this inquiry.

12. SUMMARY OF RECOMMENDATIONS

1. We recommend that the RCMP continue to make available sensitivity and cross-cultural training to its members and in particular those members assigned to police native communities.

2. We recommend that the RCMP continue to maintain a "satellite office" on the Indian Brook Reserve to provide a more adequate police presence and improve the RCMP's response time in this community.

3. We recommend that the RCMP recruit, train, and deploy more members of aboriginal descent to police, particularly, native communities.

4. We recommend that members of the RCMP who are the subject of public complaints refrain from conducting further investigations of criminal charges against the complainants.

5. We recommend that the RCMP establish a protocol for instructing medical physicians in obtaining and carrying out medical treatment for prisoners in order to establish clear guidelines to physicians on how to effect recommended medical treatment.

DATED at Kentville, Nova Scotia, this 31st day of December, 1997.

ALAN T. TUFTS, Q. C., CHAIR

RONALD S. NOSEWORTHY Q.C., MEMBER

13. APPENDICES

Appendix A Decision re: Application for the production of personnel and discipline records.

This decision was rendered by the Commission during the course of the Hearings. The decision is as follows:

Counsel for the complainant, Mr. Stephen Peter-Paul, seeks an order of this Commission to require the production of certain documents from the Commissioner of the RCMP, a party to these proceedings. This application is supported by counsel for the complainant, Theresa Brake, and Commission counsel.

Documents sought to be produced are (a) annual evaluations and notifications of shortcomings as contained in the members' service or personnel files and (b) discipline files of the subject members. The complainant relies on subsection 24.2(3) of the RCMP Act and maintains the records and documents are relevant to the present proceedings.

The issues which arise by virtue of this application are:

(1) does the Commission have the legislative power to order the production of the named documents and,
(2) if it has such power, should the Commission exercise its power and order production as sought in the application.

With respect to the first issue, subsection 45.45(4) of the RCMP Act gives the Commission certain powers conferred on a board of inquiry, particularly those outlined in subsection 24.1 (3)(a), (b), and (c); 24.1(3)(a) says in part:

> "A board of inquiry has, in relation to the matter before it, power
>
> (a) to summon any person ... and to produce such documents and things under that person's control *as the board deems requisite to the full investigation and consideration of that matter.*" (emphasis added)

The Commission has concluded that it has the legislative authority pursuant to subsection 24.1(3)(a) to order the production of the subject documents. We are not persuaded that the authorities cited to us prohibit the Commission from so ordering the production of these documents in the proper case. It therefore remains to determine whether this application is appropriate given the second issue identified above; that is, are the documents sought necessary and relevant to these proceedings.

The enabling RCMP Act confers on the Commission authority to inquire into "*the*" complaint. *In Re: Royal Canadian Mounted Police Public Complaints Commission (Colvin) 1994, 173 N. R. 290 (F.C. A.)* at page 304, Décary, J.A. said:

> "Clearly, in my view, Parliament intended to restrict, and did indeed restrict, the jurisdiction of the Commission to that of looking at *specific complaints* of *specific behaviour*..... and avoided setting up, to use the words of the Solicitor General previously quoted, 'a permanent body of inquiry into policy matters within the RCMP'." (emphasis added)

In *Re: Rankin,* [1991] *1 F.C. 226* the Federal Court Trial Division considered an application pursuant to section 38 of the Canada Evidence Act. In that case the Commission applied to determine the validity of an objection to disclosure of certain information from the RCM Police. There the complainants alleged that the RCMP used excessive force and infringed the complainant's right to freedom of speech all in relation to an incident where the complainant was removed from a restricted area while protesting during the visit of the President of the United States to Canada in 1989.

The complainant sought disclosure of certain intelligence files and portions of the protective policy manual of the RCMP. At page 237, Denault said:

> "The finding of whether he was mistreated by the use of excessive force, or whether his right to demonstrate was actually infringed, is a factual finding which depends on the particular facts or the circumstances. In coming to its conclusion, the Commission must weigh the evidence of Mr. Rankin against that of the RCMP and decide whether there was abuse in this specific circumstance. It has not been shown to the satisfaction of the Court that the Protective Policy Manual, the respondent intelligence file and the File No. P.O.B.-2000 are necessary with respect to this finding of fact. *The materials do not relate to a material fact in issue and the information is not relied upon by the RCMP as part of its defence.*"
>
> "Accordingly, the impugned documents are not critical to Mr. Rankin's complaint against the RCMP and he would not be prejudiced by their non-disclosure." (emphasis added)

While the documents sought in this proceeding are different in nature and the objections against disclosure raised are also different, the same principles apply. The applicant has not established any factual or legal grounds to support the proposition that the documents to be disclosed are requisite to the matters before these proceedings. In fact, she concedes that the application for the production of the documents is a "shot in the dark" to use her words.

In cross-examination reference was made to the criminal record of the complainant and the applicant submits there should be full disclosure of the members' employment and discipline records. The criminal records of the complainant is a matter of public record, the employment and discipline records of the members are private, internal records. There is a difference in our opinion.

We are not persuaded at this time that it has been established that the documents relate to any material fact in issue. Accordingly, the Commission is not prepared to order the production of these documents under the present circumstances. This ruling does not prevent the applicant from making a similar or further application for disclosure in these proceedings should it be established that the documents sought are relevant as defined above.

DATED at Kentville, Nova Scotia, this 31st day of December, 1997.

ALAN T. TUFTS, Q.C., CHAIR

RONALD S. NOSEWORTHY Q.C., MEMBER

Appendix B Decision on Jurisdiction

ROYAL CANADIAN MOUNTED POLICE PUBLIC COMPLAINTS COMMISSION

IN THE MATTER OF: Royal Canadian Mounted Police Act, R.S. c. R-9

- and -

IN THE MATTER OF: A Complaint by Theresa Brake about the conduct of Constable F.J. Mackin, in the performance of his duties;

- and -

IN THE MATTER OF: The Complaint by Mr. Steven Peter-Paul, about the conduct of Constables F.J. Mackin, M.K. Stothart and G.J. Fiander, in the performance of their duties.

DECISION ON JURISDICTION
AFTER THE RESIGNATION OF COMMISSION MEMBER JULIE DUTIL

BEFORE: Mr. Alan T. Tufts, Q.C., Chairman
Mr. Ronald S. Noseworthy, Q.C., Member

1. This hearing of the Royal Canadian Mounted Police Public Complaints Commission was instituted pursuant to subsection 45.44(1) of the Royal Canadian Mounted Police Act, R.S., c. R-9. The Commission Chairman, on October 19, 1995, issued a Notice of Decision to Institute a Hearing and assigned a panel of three members of the Royal Canadian Mounted Police Public Complaints Commission ("the Panel") to conduct the hearing.

2. The hearing commenced on April 15, 1996 and concluded hearing evidence on September 18, 1996. Before the Panel received requested written submissions from the parties and before commencing its deliberations, one of the Commission members resigned from the Commission. The subject Commission member was not from the "contracting Province", namely, Nova Scotia. Such member is required to be assigned to the Panel pursuant to subsection 45.44(2) of the Act.

3. Do the remaining two members of the Panel have jurisdiction to complete the hearing and submit a report as contemplated by subsection 45.45(14) of the Act?

4. The following are the relevant statutory provisions:

(a) Royal Canadian Mounted Police Act, R.S, c. R-9

45.29 (1) There is hereby established a commission, to be known as the Royal Canadian Mounted Police Public Complaints Commission, consisting of a Chairman, a Vice-Chairman, a member for each contracting province and not more than three other members, to be appointed by order of the Governor in Council.

45.44 (1) Where the Commission Chairman decides to institute a hearing to inquire into a complaint pursuant to subsection 45.42(3) or 45.43(1), the Commission Chairman shall assign the member or members of the Commission to conduct the hearing and send a notice in writing of the decision to the Minister, the Commissioner, the member or other person whose conduct is the subject-matter of the complaint and, in the case of a complaint under subsection 45.35(1), the complainant.

(2) Where a complaint that is to be the subject of a hearing concerns conduct occurring in the course of providing services pursuant to an arrangement entered into under section 20, the member of the Commission appointed for the province in which the conduct occurred shall be assigned, either alone or with other members of the Commission, to conduct the hearing.

45.45 (1) For the purposes of this section, the member or members conducting a hearing to inquire into a complaint are deemed to be the Commission.

(b) Interpretation Act, R.S., c. I-23:

2. (1) In this Act,

"enactment" means an Act or regulation or any portion of an Act or regulation;

"regulation" includes an order, regulation, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established

(a) in the execution of a power conferred by or under the authority of an Act, or

(b) by or under the authority of the Governor in Council.

3. (1) Every provision of this Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

22. (1) Where an enactment requires or authorizes more than two persons to do an act or thing, a majority of them may do it.

(2) Where an enactment establishes a board, court, commission or other body consisting of three or more members, in this section called an "association",

(a) at a meeting of the association, a number of members of the association equal to,

(i) if a number of members provided for by the enactment is a fixed number, at least one-half of the number of members, and

(ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range, constitutes a quorum;

(b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, is deemed to have been done by the association; and

(c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

5. The noted provisions of the Interpretation Act appear to provide a clear answer to the above query. The Commission Chairman's issued notice pursuant to subsection 45.44(1) is an "instrument issued...in the execution of a power confirmed or under the authority of an Act", as referred to in section 2(1) of the Interpretation Act and consequently

is a regulation as therein defined and is hence an "enactment" for the purposes of sections 22(1) and (2) of the Interpretation Act.

6. The Commission Chairman's notice establishes a commission consisting of three members. Section 22(2) of the Interpretation Act therefore establishes a statutory quorum of two members, being one-half of the three members assigned. Because the remaining two members constitute such a quorum of the Commission Panel, they have jurisdiction to act for the original Panel pursuant to section 22(2)(b), if the Interpretation Act applies.

7. These same provisions of the Interpretation Act were considered by the Federal Court of Appeal in In re The Tariff Board Act, [1977] 2 F.C., 228. The present section 22 of the Interpretation Act is identical to section 21 of R.S.C. 1970, c. I-23 and referred to in the Tariff Board Case. In that case, the Court considered certain provisions of the Tariff Board Act, R.S.C. 1970, c. T-1. The relevant provisions are:

> 3. (1) There shall be a Board, to be called the Tariff Board, consisting of seven members appointed by the Governor in Council.
>
> (8) With respect to an appeal to the Board pursuant to any Act other than this Act, three or more members have and may exercise and perform all the powers and functions of the Board.
>
> 5. (7) The Chairman may direct that any inquiry under section 4 may be made by any member or members of the Board designated by him and for the purposes of such inquiry the member or members so designated have and may exercise and perform all the powers and functions of the Board.

8. The Court was required to determine whether the two remaining members of the three-member Board who presided at a hearing could issue a valid declaration after one of the members died.

9. The Court found that section 3(8) and section 5(7) of the Tariff Board Act, legislated quorums for particular aspects of the Board's duties and consequently section 21 (now section 22) of the Interpretation Act did not apply. The Court found at page 230, that:

> "The Tariff Board is created by section 3(1) of the Tariff Board Act (R.S.C. 1970, c. T-1) and consists of seven members of whom one is required to be appointed as Chairman. It has a duty under that Act to conduct inquiries into matters of a general nature concerning customs or excise duties or trade and commerce at the request of the Minister of Finance or the Governor in Council and to make reports with regard thereto. A quite different part of its functions is the decision under other Acts of appeals, or differences or doubts that arise in respect of specific cases concerning liability to pay tax. In respect of what might be called the 'inquiries' function, by virtue of section 5(7), the Chairman may designate a member or members to carry out

the inquiry and 'the member or members so designated have and may exercise...all the powers and functions of the Board'. On the other hand, with respect to an 'appeal' under some Act other than the Tariff Board Act, section 3(8) reads:

> (8) With respect to an appeal to the Board pursuant to any Act other than this Act, three or more members have and may exercise and perform all the powers and functions of the Board.

While not so expressed, as we read the Act, these provisions are in effect 'quorum' provisions in that they determine the minimum number of members of the Board who must participate in carrying out the two different classes of duties assigned to it." (emphasis added)

10. The Court appears to conclude that both provisions fix quorums for the Board.

11. After considering section 21 of the Interpretation Act, the Court concluded:

> "In our view section 21(1) cannot be used to make an alteration in the requirements of a provision fixing the 'quorum' required to deal with the matter. Although we recognize that the words of the subsection are wide enough, read literally to support Council's submission, as it seems to us, section 21(1) deals with a case where a statutory quorum is exercising a statutory power; in effect, it makes 'the majority' decision the decision of the group."

12. The Court rejected the argument that section 3(8) of the Tariff Board Act created a separate tribunal of "three or more members". The Court found at page 232:

> "In our view, section 3(8) does not create any tribunal distinct from the Tariff Board but lays down a rule as to how the Tariff Board must be constituted for the hearing of an 'appeal'."

13. The final conclusion of the Court appears to be limited to the consideration of section 3(8), although its earlier comments suggest it applies to both sections.

14. Incidentally, section 3(8) of the Tariff Board Act was amended in 1977 – see Statute Law Amendment 1977 S.C. 1976-77, c. 28, section 43 – to provide that where a member of an Appeal Panel pursuant to section 3(8) ceases to hold office, the remaining members are deemed to exercise and perform all powers and functions of the Board. No amendment was made respecting section 5(7).

15. Subsection 45.44(1) of the Royal Canadian Mounted Police Act is remarkably similar to section 5(7) of the Tariff Board Act in that it allows the Commission Chairman to

assign members of the Commission to conduct a hearing pursuant to subsection 45.42(3) and subsection 45.42(1) of the Act. Is the Panel created by subsection 45.44(1) a legislated quorum of the Commission?

16. Unlike the Tariff Board, the Royal Canadian Mounted Police Public Complaints Commission as a whole is not legislated to discharge the duties which are in question. In the Tariff Board Act, it is the whole Board which is enabled, for example, to make inquiries pursuant to section 4 of the Act and it is the "Board" to which appeals are referred in "other Acts" such as, for example, in the Tariff Board reference, the Excise Act and the Customs Act. Accordingly, as the Federal Court of Appeal found, the subject section of the Tariff Board Act defines a quorum of the whole Board to discharge these particular duties, rather than to create a new tribunal.

17. Hearings instituted pursuant to subsections 45.42(3) and 45.43(1) of the Royal Canadian Mounted Police Act are not within the duties of the "Commission" as a whole. Rather, it is the Panel of member or members assigned by the Commission Chairman pursuant to subsection 45.44(1) which conducts such hearings. This "Panel" constitutes a separate tribunal and is not a "quorum" of the entire Commission. While subsection 45.45(1) deems this Panel to be the Commission for the purposes of that subsection, it is distinct from the entire Commission as constituted under subsection 45.29(1). In fact, subsection 45.45(1) further supports the proposition that the Panel is not a quorum of the Commission but is the Commission. The argument rejected by the Federal Court of Appeal in the Tariff Board reference applies here.

18. Therefore, in our opinion, the Panel as created by subsection 45.44(1) of the Royal Canadian Mounted Police Act is a separate and distinct tribunal. Section 22 of the Interpretation Act applies and hence a quorum of two members of the three-member Panel remains and has jurisdiction to complete the hearing and file a report.

DATED at Kentville, Nova Scotia, this 31st day of December 1997.

ALAN T. TUFTS, Q. C., CHAIR

RONALD S. NOSEWORTHY Q.C., MEMBER

APPENDIX B

Royal Canadian Mounted Police

Gendarmerie royale du Canada

J.P.R. Murray
Commissioner Le Commissaire

September 11, 1998

PROTECTED "A"

Ms. Shirley Heafey
Chair
RCMP Public Complaints Commission
P.O. Box 3423
Station "D"
Ottawa, Ontario
K1P 6L4

Dear Ms. Heafey:

I acknowledge receipt of the interim report of December 31, 1997, file reference 2000-PCC-950253, and materials relevant to the complaint of Ms. Theresa Brake and Mr. Stephen Peter-Paul.

On August 25, 1998, I examined the conclusions and recommendations, and the following notice is provided pursuant to the Royal Canadian Mounted Police Act.

I agree with your findings pertaining to the allegations of Ms. Brake and Mr. Peter-Paul.

With respect to recommendation 1, the cadets at the Training Academy are introduced to scenarios involving Aboriginal communities. The cadets explore the nature of the conflict in the community, define and analyse the problem, the community/clients' needs and expectations, and identify additional information which is required and the sources to obtain that information. A group of experts and community representatives is available to respond to questions raised by the cadets as a result of their research. At the end of their training, the cadets should be in a better position to understand the treaties, land claims, social, economic, and cultural issues facing First Nations.

In "H" Division, sensitivity training and presentations on a number of training courses regarding culture, tradition

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and spirituality have been given by Aboriginal members. However, at the present time, there is no structured Cross Cultural Training Course. "H" Division is in the process of developing a course in the form of a Cultural Camp which will involve members and the community including youth, as well as other external partners from the military and other police departments.

In total, there are thirteen First Nations Bands within "H" Division, and the RCMP is responsible for police service delivery to nine of them. "H" Division has a Tripartite agreement with four First Nations Bands: two stand-alone detachments, one of which is in the Indian Brook Community, staffed by five members including a sergeant, a corporal and three Aboriginal constables, the other in the Millbrook Community; and two formal satellite detachments where dedicated Aboriginal members provide police service, one of which is located at Pictou Landing and the other at Wagmacook First Nations. Although the remaining five First Nations Bands do not have an agreement, Aboriginal members are stationed at the detachments responsible for policing them in order to ensure that aboriginal members are available to provide service to those communities.

Section II.1.R. of the RCMP Administration Manual outlines the policy concerning the Aboriginal Cadet Development Program, an initiative to develop Aboriginal cadets in competencies identified as necessary to succeed at the Training Academy and ultimately in the field. During the three fiscal years from 1995/96 to 1997/98, a total of 278 Aboriginal cadets enrolled in the RCMP. In "H" Division, there are currently 30 Aboriginal members performing a variety of duties including customs and excise, administration, general duties, and duties involving the Tactical Troop. In addition, the Criminal Operations Restorative Justice Coordinator is also an Aboriginal member.

Section XII.2.C.9. of the RCMP Administration Manual states that a member shall not investigate a complaint where that member may be in a conflict of interest situation. In addition, section XII.2.E.11. indicates that when the accused in a case before the court makes a public complaint against the member who arrested him/her or who is investigating the case, the Crown must be fully briefed on the public complaint. From a policy perspective, both these sections adequately address your recommendation 4 and the suggestion that officers dealing with complaints should not be directly involved with other investigations.

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Regarding recommendation 5, it is not for the police to instruct a physician as to how to conduct a medical examination. I will, however, request that the Commanding Officer of "H" Division ensure that members, in situations such as this, clearly indicate to a physician that they are obligated to take the necessary action to ensure that a person in custody receives immediate treatment following a medical examination.

With respect to the provision of Aboriginal policing services, section IV.8.C.1. of the RCMP Operational Manual states that the RCMP will initiate, develop and evaluate practical and culturally sensitive policing services known as the Aboriginal Policing Program, in concert with representatives of the Aboriginal Community. Section IV.8.D.1. of this manual also indicates that in areas with a high concentration of Aboriginal peoples, i.e., First Nations, Inuit, non-status and Metis, it is advantageous to have members with identical or similar ethnic and cultural backgrounds as part of the policing component. Section IV.8.E.1. directs that in each Aboriginal community, the Commander will create an Aboriginal Consultative Committee/Group from persons representing the Aboriginal population e.g. elders, women, youth and band, hamlet or community councils, and section IV.8.F.1.a. indicates that the Advisory Committee to the Commissioner of the RCMP on Aboriginal issues provides a forum for the continuing discussion of recruiting, training and community relations regarding Aboriginal people, intercultural relations and other related matters.

I thank you for your advice, and I look forward to receiving your final report.

Sincerely,

J.R.R. Murray